USCIS Response to Coronavirus (COVID-19)

U.S. Citizenship and Immigration Services

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- No priority date retention based on an approved Form I-526;
- The required standard minimum investment amount of $1 million and the minimum investment amount for investment in a Targeted Employment Area (TEA) of $500,000;
- Permitting state designations of high unemployment TEAs; and
- Prior USCIS procedures for the removal of conditions on permanent residence.

In other words, we are applying the regulations in effect before Nov. 21, 2019 in this chapter.

ALERT: Statutory authorization related to the EB-5 Immigrant Investor Regional Center Program expired at midnight on June 30, 2021. This lapse in authorization does not affect EB-5 petitions filed by investors who are not seeking a visa under the Regional Center Program. Due to the lapse in authorization related to the Regional Center

Program, USCIS will reject the following forms received on or after July 1, 2021:

- Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program, except when the application type indicates that it is an amendment to the regional center's name, organizational structure, ownership, or administration; and
- Form I-526, Immigrant Petition by Alien Investor, when it indicates that the petitioner's investment is associated with an approved regional center.

In general, we will not act on any pending petition or application of these form types that is dependent on the lapsed statutory authority until further notice.

A. Purpose

The Immigration and Nationality Act (INA) makes visas available to qualified immigrant investors who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers.[1] Congress created this employment-based fifth preference immigrant visa category (EB-5) to benefit the U.S. economy by providing an incentive for foreign capital investment that creates or preserves U.S. jobs.

The INA authorizes approximately 10,000 visas each fiscal year for immigrant investors (along with their spouses and unmarried children under the age of 21) who have invested or are actively in the process of investing in a new commercial enterprise and satisfy the applicable job creation requirements. Three thousand of the visas are set aside for immigrants, and their eligible family members, who invest in a new commercial enterprise within a USCIS-designated regional center. Regional centers are organized in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment.[2]

The INA establishes a threshold investment amount of $1,000,000 U.S. dollars per investor and provides the ability to raise the amount by regulation. On July 24, 2019, DHS published the EB-5 Immigrant Investor Program Modernization rule, which raised the investment amount for petitions filed on or after November 21, 2019.[3] Beginning October 1, 2024, the investment amount automatically adjusts every 5 years for petitions filed on or after each adjustment's effective date to an amount determined by a prescribed method and calculation.[4] DHS may also update the investment amount by publishing a technical amendment in the Federal Register.

To encourage investment in new enterprises located in areas that would most benefit from employment creation, the INA also sets aside at least 3,000 of the approximately 10,000 EB-5 visas annually for qualified immigrants who invest in new commercial enterprises that will create employment in targeted employment areas (TEA), which includes rural areas and areas with high unemployment. The minimum amount for investing in a TEA was previously set at 50 percent of the standard minimum investment amount, $500,000 U.S. dollars per investor, but increased to $900,000 for petitions filed on or after November 21, 2019.[5] As with the standard minimum investment amount, beginning on October 1, 2024, and every 5 years thereafter, the TEA amount automatically adjusts for petitions filed on or after each adjustment's effective date, to be equal to 50 percent of the standard minimum investment amount described above.[6]

The minimum investment amounts by filing date and investment location are:

Petition Filing Date	Minimum Investment Amount[7]	TEA Investment Amount[8]	High Employment Area Investment Amount[9]
Before November 21, 2019	$1,000,000	$500,000	$1,000,000
On or After November 21, 2019[10]	$1,800,000	$900,000	$1,800,000

Upon adjustment of status or admission to the United States, immigrant investors and their derivative family members receive conditional permanent resident status for a 2-year period. Ultimately, if the applicable requirements have been satisfied, USCIS removes the conditions and the immigrants become lawful permanent residents (LPRs) of the United States without conditions.

B. Background

1. EB-5 Category Beginnings

In 1990, Congress created the EB-5 immigrant visa category.[11] The legislation envisioned LPR status, initially for a 2-year conditional period, for immigrant investors who established,[12] invested (or were actively in the process of investing) in, and engaged in the management of job-creating or job-preserving for-profit enterprises.[13] Congress placed no restriction on the type of the business if the immigrant investor invested the required capital and directly created at least 10 jobs for U.S. workers.

2. Creation of the Regional Center Program

In 1992, Congress expanded the allowable measure of job creation for the EB-5 category by launching the Immigrant Investor Pilot Program (referred to in this guidance as the Regional Center Program).[14] Congress designed this program to determine the viability of pooling investments in designated regional centers.[15] Currently, the jurisdiction of a regional center is based on the regional center proposal submitted to and approved by USCIS.

The Regional Center Program is different from the direct job creation (stand-alone) model because it allows for the use of reasonable economic or statistical methodologies to demonstrate job creation. Reasonable methodologies are used, for example, to credit indirect (including induced)

jobs to immigrant investors. Indirect jobs are jobs held outside the enterprise that receives immigrant investor capital.

3. Program Extensions

Congress initially approved the Regional Center Program as a trial pilot program, set to expire after 5 years. Congress has extended the program several times.[16]

Evolution of EB-5 Program

Act	Statutory Provisions
Sections 121(a)-(b) of the Immigration Act of 1990[17]	• Congress creates the employment-based fifth preference immigrant visa category (EB-5). • EB-5 provides a path to permanent resident status, initially on a 2-year conditional basis, to qualified immigrant investors who contribute to U.S. economic growth by investing in domestic businesses and creating employment. • Intends for immigrant investors to establish, invest in, and engage in the management of job-creating commercial enterprises.
Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993[18]	• Congress creates an Immigrant Investor Pilot Program (Regional Center Program) to have a number of the available EB-5 visas set aside each fiscal year for immigrant investors (and eligible family members) who invest in a commercial enterprise associated with a designated Regional Center. • Regional centers designated for the promotion of economic growth. • The Regional Center Program allows foreign investors to claim credit for direct and indirect job creation.[19]

Act	Statutory Provisions
Sections 11035-37 of the 21st Century Department of Justice Appropriations Authorization Act[20]	• Includes a specific reference to limited partnerships as commercial enterprises and eliminates the requirement that immigrant investors prove they have established a commercial enterprise themselves. Investors need only show they have invested or are actively in the process of investing in a commercial enterprise, among other requirements. • Defines full-time employment as employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position. • Allows regional center proposals to be based on general but economically and statistically sound predictions submitted with the proposal concerning the kinds of enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of the investments, and other positive economic effects of the investments.
Section 1 of Pub. L. 112-176 (PDF)[21]	• Eliminates the word pilot from the name of the Regional Center Program.

C. Legal Authorities

- INA 203(b)(5); 8 CFR 204.6 – Employment creation immigrants
- INA 216A; 8 CFR 216.6 – Conditional permanent resident status for certain alien entrepreneurs, spouses, and children
- 8 CFR 216.3 – Termination of conditional permanent resident status
- Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993[22]

Footnotes

[^ 1] See INA 203(b)(5).

[^ 2] See Section 610(a) of the Judiciary Appropriations Act of 1993, Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992) as amended by Section 11037 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF), 116 Stat. 1758, 1847 (November 2, 2002).

[^ 3] See 84 FR 35750 (PDF) (July 24, 2019),

[^ 4] See 84 FR 35750, 35766-67 (PDF) (July 24, 2019). See 8 CFR 204.6(f)(1).

[^ 5] See INA 203(b)(5)(B)-(C). See 8 CFR 204.6(e)-(f)(2).

[^ 6] See 8 CFR 204.6(f)(2).

[^ 7] See 8 CFR 204.6(f)(1). See 8 CFR 204.6(f)(1) (PDF) (as in effect before November 21, 2019).

[^ 8] See 8 CFR 204.6(f)(2). See 8 CFR 204.6(f)(2) (PDF) (as in effect before November 21, 2019).

[^ 9] See 8 CFR 204.6(f)(3). See 8 CFR 204.6(f)(3) (PDF) (as in effect before November 21, 2019).

[^ 10] These amounts automatically adjust on October 1, 2024. USCIS will update this Part accordingly.

[^ 11] See Section 121(a) of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

[^ 12] In 2002, Congress eliminated the requirement that an immigrant investor establish the new commercial enterprise. See Section 11036 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF), 116 Stat. 1758, 1846 (November 2, 2002).

[^ 13] See Sections 121(a)-(b)(1) of IMMACT90, Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

[^ 14] See Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. 102-395 (PDF), 106 Stat. 1828, 1874 (October 6, 1992).

[^ 15] See S. Rep. 102-331 at 118 (July 23, 1992).

[^ 16] For information on the current expiration date, see the USCIS website.

[^ 17] See Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

[^ 18] See Pub. L. 102-395 (PDF), 106 Stat. 1828, 1874 (October 6, 1992).

[^ 19] For a discussion on indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs [6 USCIS-PM G.2(D)].

[^ 20] See Pub. L. 107-273 (PDF), 116 Stat. 1758, 1846 (November 2, 2002).

[^ 21] See 126 Stat. 1325, 1325 (September 28, 2012).

[^ 22] See Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

Current as of July 22, 2021

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Chapter 2 - Eligibility Requirements

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The immigrant investor category requires three main elements:

- An investment of capital;
- In a new commercial enterprise;
- Which creates jobs.

Each element is explained in this chapter in the context of both the stand-alone program and the Regional Center Program.

For the general requirements, the term immigrant investor in this Part of the Policy Manual refers to any EB-5 investor-petitioner, whether investing through the stand-alone program or the Regional Center Program. Where distinctions between the two programs exist, the term non-regional center immigrant investor refers to petitioners using the stand-alone program, and the term regional center immigrant investor refers to petitioners using the Regional Center Program.

A. Investment of Capital

Congress created the immigrant investor category so the U.S. economy can benefit from an immigrant's contribution of capital. This benefit is greatest when capital is at risk and invested in a new commercial enterprise that, because of the investment, creates at least 10 full-time jobs for U.S. workers. The regulations that govern the category define the terms capital and investment with this economic benefit in mind.[1]

1. Capital

The word capital does not mean only cash. Instead, the broad definition of capital takes into account the many different ways in which a person can make a contribution of financial value to a business. Capital includes cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided the immigrant investor 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.[2] All capital must be valued at fair market value in U.S. dollars.

The immigrant investor must establish that he or she is the legal owner of the capital invested[3] and has obtained the capital through lawful means. Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital.[4] To establish that the capital was obtained through lawful means, the immigrant investor's petition must include (if applicable):

- Foreign business registration records;
- Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this list), and personal tax returns, including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within 5 years with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor;
- Evidence identifying any other source(s) of capital; or
- Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past 15 years.[5]

Promissory Notes

Capital can include the immigrant investor's promise to pay (a promissory note), as long as the immigrant investor is personally and primarily liable for the promissory note debt and his or her assets adequately secure the note. Any security interest must be perfected[6] to the extent provided for by the jurisdiction in which the asset is located.[7] Further, the assets securing the promissory note:

- Cannot include assets of the company in which the immigrant is investing;
- Must be specifically identified as securing the promissory note; and
- Must be fully amenable to seizure by a U.S. noteholder.[8]

The fair market value of a promissory note depends on its present value, not the value at any different time. In addition, to qualify as capital, nearly all of the money due under a promissory note must be payable within 2 years, without provisions for extensions.[9]

Investing Indebtedness

When investing indebtedness, an immigrant investor must demonstrate:

- The immigrant investor is personally and primarily liable for the debt;
- The indebtedness is secured by assets the immigrant investor owns; and
- The assets of the new commercial enterprise are not used to secure any of the indebtedness.

The immigrant investor must have primary responsibility, under the loan documents, for repaying

the debt used to satisfy his or her minimum required investment amount.[10]

The immigrant investor must also demonstrate that his or her own collateral secures the indebtedness, and that the value of the collateral is sufficient to secure the amount of indebtedness that satisfies the immigrant investor's minimum required investment amount. Any indebtedness secured by the immigrant investor's assets qualifies as capital only up to the fair market value of the immigrant investor's pledged assets.

2. Investment

The immigrant investor is required to invest his or her own capital. The petitioner must document the path of the funds to establish that the investment was made, or is actively in the process of being made, with the immigrant investor's own funds.[11]

To invest means to contribute capital. A loan from the immigrant investor to the new commercial enterprise does not count as a contribution of capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise is not a capital investment.[12]

To qualify as an investment, the immigrant investor must actually place his or her capital at risk. The mere intent to invest is not sufficient.[13]

Purchasing a share of a business from an existing shareholder, without more, will not qualify, since the payment goes to the former shareholder rather than to the new commercial enterprise.

Guaranteed Returns

If the immigrant investor is guaranteed a return, or a rate of return on all or a portion of his or her capital, then the amount of any guaranteed return is not at risk.[14] For the capital to be at risk there must be a risk of loss and a chance for gain.

Additionally, if the investor is guaranteed the right to eventual ownership or use of a particular asset in consideration of the investor's contribution of capital into the new commercial enterprise, the expected present value of the guaranteed ownership or use of such asset will count against the total amount of the investor's capital contribution in determining how much money was placed at risk. For example, if the immigrant investor is given a right of ownership or use of real estate, the present value of that real estate will not be counted as investment capital put at risk of loss.[15]

Nothing prevents an immigrant investor from receiving a return on his or her capital in the form of a distribution of profits from the new commercial enterprise. This distribution of profits may happen during the conditional residency period and may happen before creating the required jobs. However, the distribution cannot be a portion of the investor's minimum qualifying investment and cannot have been guaranteed to the investor.

Redemption Language

The regulatory definition of "invest" excludes capital contributions that are "in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement."[16]

An agreement evidencing a preconceived intent to exit the investment as soon as possible after removing conditions on permanent residence may constitute an impermissible debt arrangement. [17] Funds contributed in exchange for a debt arrangement do not constitute a qualifying contribution of capital.[18] In general, the petitioner may not enter into the agreement knowing that he or she has a willing buyer at a certain time and for a certain price.[19]

Any agreement between the immigrant investor and the new commercial enterprise that provides the investor with a contractual right to repayment is an impermissible debt arrangement. In such a case, the investment funds do not constitute a qualifying contribution of capital.[20] Mandatory redemptions and options exercisable by the investor are two examples of agreements where the investor has a right to repayment. The impermissibility of such an arrangement cannot be remedied with the addition of other requirements or contingencies, such as conditioning the repurchase of the securities on the availability of funds; the delay of the repurchase until a date in the future (including after the adjudication of the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829)); or the possibility that the investor might not exercise the right. In other words, repayment does not need to be guaranteed in order to be impermissible. It is the establishment of the investor's right to demand a repurchase, regardless of the new commercial enterprise's ability to fulfill the repurchase, that constitutes an impermissible debt arrangement.[21]

The following table describes certain characteristics that might be present in agreements and explains whether their inclusion creates an impermissible debt arrangement.

Characteristics of Redemption Provisions

Type of Provision	Description	Impermissible Agreement?
Mandatory redemptions	Arrangements that require the new commercial enterprise to redeem all or a portion of the petitioner's equity at a specified time or upon the occurrence of a specified event (for example, once the conditions are removed on the petitioner's permanent resident status) and for a specified price (whether fixed or subject to a specified formula).	USCIS considers this an impermissible debt arrangement. Such impermissible obligations are not subject to the discretion of the new commercial enterprise (although it may have some discretion regarding the timing and manner in which the redemption is performed).

Type of Provision	Description	Impermissible Agreement?
Options exercisable by the investor	Arrangements that grant the petitioner the option to require the new commercial enterprise to redeem all or a portion of his or her equity at a specified time or upon the occurrence of a specified event (for example, once the conditions are removed on the petitioner's permanent resident status) and for a specified price (whether fixed or subject to a specified formula).	USCIS considers this an impermissible debt arrangement.
Option exercisable by the new commercial enterprise	A redemption agreement between the immigrant investor and the new commercial enterprise that does not provide the investor with a right to repayment. One example of such an agreement is a discretionary option held by the new commercial enterprise to repurchase investor shares. These options are typically structured similarly to options exercisable by the investor, except that the option is held and may be exercised by the new commercial enterprise. When executed, these options require an investor to sell all or a portion of his or her ownership interest back to that entity.	USCIS generally does not consider these arrangements to be impermissible debt arrangements.[22] However, such an option may be impermissible if there is evidence the parties construct it in a manner that effectively converts it to a mandatory redemption or an option exercisable by the investor(considered a debt arrangement). For example, an arrangement would be impermissible if ancillary provisions or agreements obligate the new commercial enterprise to either (a) exercise the option (at a specified time, upon the occurrence of a specified event, or at the request of the investor) or (b) if it chooses not to exercise the option, liquidate the assets and refund the investor a specific amount.

Business Activity

An immigrant investor must provide evidence of the actual undertaking of business activity. Merely establishing and capitalizing a new commercial enterprise and signing a commercial lease are not sufficient to show that an immigrant investor has placed his or her capital at risk.[23] Without some evidence of business activity, no assurance exists that the funds will be used to carry out the business of the commercial enterprise.[24]

Made Available

The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.[25] In the regional center context, the immigrant investor must establish that the capital was invested into the new commercial enterprise and that the full amount was subsequently made available to the job-creating entity or entities, if separate.[26]

In cases with a separate job-creating entity or entities, the payment of administrative fees, management fees, attorneys' fees, finders' fees, syndication fees, and other types of expenses or costs by the new commercial enterprise that erode the amount of capital made available to the job-creating entity do not count toward the minimum required investment amount.[27] The payment of these fees and expenses must be in addition to the minimum required capital investment amount.

Sole Proprietors and Funds in Bank Accounts

A non-regional center investor who is operating a new commercial enterprise as a sole proprietor cannot consider funds in his or her personal bank account as capital committed to the new commercial enterprise. Funds in a personal bank account are not necessarily committed to the new commercial enterprise. The funds must be in business bank accounts.[28] However, even a deposit into a business account over which petitioner exercises sole control, without more, may not satisfy the at-risk requirement.[29]

Escrow Accounts

An immigrant investor's money may be held in escrow until the investor has obtained conditional permanent resident status if the immediate and irrevocable release of the escrowed funds is contingent only upon:

- Approval of the Immigrant Petition by Alien Investor (Form I-526); and
- Visa issuance and admission to the United States as a conditional permanent resident, or approval of the investor's Application to Register Permanent Residence or Adjust Status (Form I-485).

An immigrant investor's funds may be held in escrow within the United States to avoid any evidentiary issues that may arise with respect to issues such as significant currency fluctuations[30] and foreign capital export restrictions.

Use of foreign escrow accounts is not prohibited as long as the petition establishes that it is more likely than not that the minimum qualifying capital investment will be transferred to the new

commercial enterprise in the United States upon the investor obtaining conditional permanent resident status.

When adjudicating the immigrant investor's petition to remove conditions,[31] USCIS requires evidence verifying that the escrowed funds were released and that the investment was sustained in the new commercial enterprise for the period of the immigrant investor's residence in the United States.

Deployment of Capital

Before the job creation requirement is met, a new commercial enterprise may deploy capital directly or through any financial instrument so long as applicable requirements are satisfied, including the following:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain;
- Business activity must actually be undertaken;
- The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based;[32] and
- A sufficient relationship to commercial activity (namely, engagement in commerce, that is, the exchange of goods or services) exists such that the enterprise is and remains commercial.[33]

The purchase of financial instruments traded on secondary markets generally does not satisfy these requirements because such secondary market purchases generally:

- Are not related to the actual undertaking of business activity;
- Do not make capital available to the job-creating business; and
- Represent an activity that is solely or primarily financial rather than commercial in nature.

Further Deployment After the Job Creation Requirement is Satisfied

Once the job creation requirement has been met and the investment capital is returned or otherwise available to the new commercial enterprise, the new commercial enterprise may further deploy such capital within a reasonable amount of time[34] in order to satisfy applicable requirements for continued eligibility.[35] The capital may be further deployed, as described above, into any commercial activity that is consistent with the purpose of the new commercial enterprise to engage in the "ongoing conduct of lawful business,"[36] including as may be evidenced in any amendments to the offering documents made to describe the further deployment into such activities.[37]

Consistent with precedent case decisions and existing regulatory requirements, further deployment must continue to meet all applicable eligibility requirements within the framework of the initial

bases of eligibility,[38] including the same new commercial enterprise[39] and regional center.[40] In addition, because a regional center has "jurisdiction over a limited geographic area,"[41] further deployment must occur within the regional center's geographic area, including any amendments to its geographic area approved before the further deployment. The further deployment, however, does not need to remain with the same (or any) job creating entity or in a targeted employment area.

For example, if a new commercial enterprise associated with a regional center loaned pooled investment capital to a job-creating entity that created sufficient jobs through the construction of a residential building in a targeted employment area, the new commercial enterprise, upon repayment of the loan that resulted in the required job creation, may generally further deploy the repaid capital anywhere within the regional center's geographic area (regardless of whether it would qualify as a targeted employment area) into any commercial activity that satisfies applicable requirements such as one or more similar loans to other entities.

3. Required Amount of Investment

The immigrant investor must invest at least the standard minimum investment amount in capital in a new commercial enterprise that creates not fewer than 10 jobs for U.S. workers. An exception exists if the immigrant investor invests his or her capital in a new commercial enterprise that is principally doing business in and creates jobs in a targeted employment area. In such a case, the immigrant investor must invest a minimum of 50 percent of the standard minimum investment amount in capital.

This means that the present fair market value, in U.S. dollars, of the immigrant investor's lawfully-derived capital must be at least $1,000,000, or $500,000 if investing in a targeted employment area for petitions filed before November 21, 2019.[42] For petitions filed on or after November 21, 2019, those amounts are $1,800,000 or $900,000 respectively, and automatically increase October 1, 2024, and every 5 years thereafter.[43]

An immigrant investor may diversify his or her investment across a portfolio of businesses or projects, but only if the minimum investment amount is first placed in a single new commercial enterprise. In such a case, it is necessary to show how eligibility has been established (for example, the minimum investment amount, evidence of an at-risk investment,[44] and job creation) with respect to each job-creating entity at the time of filing.

For non-regional center investors, the capital may be deployed into a portfolio of wholly owned businesses, so long as all capital is deployed through a single commercial enterprise and all jobs are created directly within that commercial enterprise or through the portfolio of businesses that received the capital through that commercial enterprise.

For example, for a petition filed before November 21, 2019, based on an investment in an area in which the minimum investment amount is $1,000,000, the non-regional center investor can satisfy the statute by investing in a commercial enterprise that deploys $600,000 of the investment toward one business that the commercial enterprise wholly owns, and $400,000 of the investment toward another business that the commercial enterprise wholly owns.[45] In this example, the two wholly owned businesses would have to create an aggregate of 10 new jobs between them. However, a

non-regional center investor cannot qualify by investing $600,000 in one commercial enterprise and $400,000 in a separate commercial enterprise, since these are not wholly owned by a single commercial enterprise.

In the regional center context, where indirect jobs may be counted, the commercial enterprise may create jobs indirectly through multiple investments in corporate affiliates or in unrelated entities, but the regional center investor cannot qualify by investing directly in those multiple entities. Instead, the regional center investor's capital must still be invested in a single commercial enterprise, which can then deploy that capital to multiple job-creating entities as long as the portfolio of businesses or projects can create the required number of jobs.

4. Lawful Source of Funds

The immigrant investor must demonstrate by a preponderance of the evidence that the capital invested, or actively in the process of being invested, in the new commercial enterprise was obtained through lawful means.[46] Any assets acquired directly or indirectly by unlawful means, such as criminal activity, are not considered capital.[47] In establishing that the capital was acquired through lawful means, the immigrant investor must provide evidence demonstrating the direct and indirect source of his or her investment capital.[48]

As evidence of the lawful source of funds, the immigrant investor's petition must be accompanied, as applicable, by:

- Foreign business registration records;
- Corporate, partnership, or any other entity in any form which has filed in any country or subdivision thereof any return described in this list, and personal tax returns, including income, franchise, property (whether real, personal, intangible), or any other tax returns of any kind filed within 5 years, with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor;
- Evidence identifying any other source(s) of capital; or
- Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past 15 years.[49]

The immigrant investor is required to submit evidence identifying any other source of capital. Such evidence may include:

- Corporate, partnership, or other business entity annual reports;
- Audited financial statements;
- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by the immigrant investor's own assets, other than those of the new commercial enterprise, and for which the immigrant investor is personally

and primarily liable;

- Evidence of income such as earnings statements or official correspondence from current or prior employers stating when the immigrant investor worked for the company and how much income the immigrant investor received during employment;
- Gift instrument(s) documenting gifts to the immigrant investor;
- Evidence, other than tax returns,[50] of payment of individual income tax, such as an individual income tax report or payment certificate, on the following:
  - Wages and salaries;
  - Income from labor and service or business activities;
  - Income or royalties from published books, articles, photographs, or other sources;
  - Royalties or income from patents or special rights;
  - Interest, dividends, and bonuses;
  - Rental income;
  - Income from property transfers;
  - Any incidental income or other taxable income determined by the relevant financial department;
- Evidence of property ownership, including property purchase or sale documentation; or
- Evidence identifying any other source of capital.

5. Targeted Employment Area

A targeted employment area (TEA) is a rural area or an area that has experienced high unemployment.[51] A rural area is any area other than an area within a standard metropolitan statistical area (MSA) (as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more based on the most recent decennial census of the United States.[52] A high unemployment area is an area that has experienced unemployment of at least 150 percent of the national average rate.[53]

Congress provided for a reduced investment amount in a TEA to encourage investment in new commercial enterprises principally doing business in and creating jobs in areas of greatest need. For the lower capital investment amount to apply, the new commercial enterprise into which the immigrant invests or the actual job-creating entity must be principally doing business in the TEA.

A new commercial enterprise is principally doing business in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be

principally doing business in the location most significantly related to the job creation.

Factors considered in determining where a new commercial enterprise is principally doing business include, but are not limited to, the location of:

- Any jobs directly created by the new commercial enterprise;
- Any expenditure of capital related to the creation of jobs;
- The new commercial enterprise's day-to-day operation; and
- The new commercial enterprise's assets used in the creation of jobs.[54]

Investments through regional centers allow the immigrant investor to seek to establish indirect job creation. In these cases, principally doing business will apply to the job-creating entity rather than the new commercial enterprise. The job-creating entity must be principally doing business in the TEA for the lower capital investment amount to apply.[55]

To demonstrate that the area of the investment is a TEA, the immigrant investor must demonstrate that the TEA meets the statutory and regulatory criteria by submitting:

- Evidence that the area is not located within any MSA as designated by the Office of Management and Budget, nor within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States;[56]
- For petitions filed before November 21, 2019, either:
  - A letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area;[57] or
  - Unemployment data for the relevant MSA or county;[58] or
- For petitions filed on or after November 21, 2019, either:
  - Unemployment data for the relevant MSA, specific county within an MSA, county in which a city or town with a population of 20,000 or more is located, or the city or town with a population of 20,000 or more which is outside an MSA;[59] or
  - A description of the boundaries and unemployment statistics that allows USCIS to make a case-specific designation as an area of high unemployment.[60] The area must consist of the census tract or contiguous census tract(s) in which the new commercial enterprise is principally doing business, and may also include any or all census tracts directly adjacent to such census tract(s).[61] The immigrant investor must demonstrate that the weighted average of the unemployment rate for the subdivision (that is, the area comprised of multiple census tracts), based on the labor force employment measure for each census tract, is at least 150 percent of the national average unemployment rate.[62]

To promote predictability in the capital investment process, an officer identifies the appropriate date to examine in order to determine that the immigrant investor's capital investment qualifies for

the lower capital investment amount according to the following table:

Targeted Employment Area (TEA) Analysis

If the Investment of Capital…	**Then…**
Is made in to the new commercial enterprise, and made available to the job-creating entity in the case of investment through a regional center, before the filing of the Immigrant Petition by Alien Investor (Form I-526).	The TEA analysis should focus on whether the area in which the new commercial enterprise, or job-creating entity in the case of investment through a regional center, is principally doing business qualifies as a TEA at the time of the investment.
Has yet to be made in to the new commercial enterprise, or made available to the job-creating entity in the case of investment through a regional center, at the time of the Form I-526 petition filing.	The TEA analysis should focus on whether the area in which the new commercial enterprise, or job-creating entity in the case of investment through a regional center, is principally doing business qualifies as a TEA at the time of the filing of the Form I-526 petition.

A geographic area that once qualified as a TEA may no longer qualify as employment rates or population increase over time. Immigrant investors occasionally request eligibility for the reduced investment threshold based on the fact that other immigrant investors who previously invested in the same new commercial enterprise qualified for the lower capital investment amount. The immigrant investor must establish, however, that at the time of investment or at the time of filing the immigrant petition, as applicable, the geographic area in question qualified as a TEA. An immigrant investor cannot rely on previous TEA determinations made based on facts that have subsequently changed.

The area in question may qualify as a TEA at the time the investment is made or the Form I-526 immigrant petition is filed, whichever occurs first, but may cease to qualify by the time the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829) is filed. The investor is not required to demonstrate that the area in question remains a TEA at the time the Form I-829 petition is filed. Changes in population size or unemployment rates within the area during the period of conditional permanent residence are acceptable, since increased job creation is a primary goal, which has been met if the area was a TEA at the time the investment was made, or the Form I-526 was filed.

A State's Designation of a Targeted Employment Area Before November 21, 2019

A state government's designation of a geographic or political subdivision within its boundaries as a TEA will not satisfy evidentiary requirements for petitions filed on or after November 21, 2019. For petitions filed before November 21, 2019, a state government could designate a geographic or

political subdivision within its boundaries as a TEA based on high unemployment. Before the state could make such a designation, an official of the state must have notified USCIS of the agency, board, or other appropriate state governmental body that would be delegated the authority to certify that the geographic or political subdivision was a high unemployment area.[63] The state was then able to send a letter from the authorized body of the state certifying that the geographic or political subdivision of the MSA or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business had been designated a high unemployment area.[64]

Consistent with the regulations in effect before November 21, 2019, USCIS deferred to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the TEA. However, for all TEA designations, USCIS still ensured compliance with the statutory requirement that the proposed area designated by the state had an unemployment rate of at least 150 percent above the national average. To do this, USCIS reviewed state determinations of the unemployment rate and assessed the method or methods by which the state authority obtained the unemployment statistics.

Acceptable data sources for calculating unemployment included U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from Local Area Unemployment Statistics).

There has never been a provision allowing a state to designate a rural area.

B. Comprehensive Business Plan

A comprehensive business plan should contain, at a minimum, a description of the business, its products or services (or both), and its objectives.[65]

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market and prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources.

The plan should detail any contracts executed for the supply of materials or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the basis of such projections.

Most importantly, the business plan must be credible.[66]

USCIS reviews business plans in their totality. An officer must determine if it is more likely than not that the business plan is comprehensive and credible. A business plan is not required to contain all of the detailed elements, but the more details the business plan contains, the more likely it is that the plan will be considered comprehensive and credible.[67]

C. New Commercial Enterprise

A new commercial enterprise is any commercial enterprise established after November 29, 1990.[68] Therefore, the immigrant investor can invest the required amount of capital in a commercial enterprise established after November 29, 1990, provided the remaining eligibility criteria are met.

A commercial enterprise is any for-profit activity formed for the ongoing conduct of lawful business.[69] This broad definition is consistent with the realities of the business world and the many different forms and structures that job-creating activities can have.

Types of commercial enterprises include, but are not limited to:

- Sole proprietorship;
- Partnership (whether limited or general);
- Holding company;
- Joint venture;
- Corporation;
- Business trust; or
- Other entity, which may be publicly or privately owned.[70]

A commercial enterprise can consist 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. Noncommercial activities, including owning and operating a personal residence, do not qualify.[71]

The commercial enterprise must be formed to make a profit, unlike, for example, some charitable organizations.

1. Enterprise Established On or Before November 29, 1990

A new commercial enterprise also includes a commercial enterprise established on or before November 29, 1990, if the enterprise will be restructured or expanded through the immigrant's investment of capital.

Purchase of an Existing Business that is Restructured or Reorganized

The immigrant investor can invest in a business that existed on or before November 29, 1990, provided that the existing business is simultaneously or subsequently restructured or reorganized such that a new commercial enterprise results.[72] Cosmetic changes to the décor, a new marketing strategy, or a simple change in ownership do not qualify as restructuring.[73]

However, a business plan that modifies an existing business, such as converting a restaurant into a nightclub or adding substantial crop production to an existing livestock farm, could qualify as a

restructuring or reorganization.

Expansion of an Existing Business

The immigrant investor can invest in a business that existed on or before November 29, 1990, provided a substantial change in the net worth or number of employees results from the investment of capital.[74]

Substantial change is defined as a 40 percent increase either in the net worth or in the number of employees, so that the new net worth or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.[75]

Investment in a new commercial enterprise in this manner does not exempt the immigrant investor from meeting the requirements relating to the amount of capital that must be invested and the number of jobs that must be created.[76]

2. Pooled Investments in Original EB-5 Program

A new commercial enterprise may be used as the basis for the petitions of more than one non-regional center immigrant investor. Each non-regional center immigrant investor must invest the required amount of capital and each immigrant investor's investment must result in the required number of jobs. Furthermore, the new commercial enterprise can have owners who are not immigrant investors provided that the sources of all capital invested are identified and all invested capital has been derived by lawful means.[77]

3. Establishment of New Commercial Enterprise

To show that the new commercial enterprise has been established, the immigrant investor must present the following evidence, in addition to any other evidence that USCIS deems appropriate:

- As applicable, articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document for the new commercial enterprise;
- A certificate evidencing authority to do business in a state or municipality or, if the form of the business does not require any such certificate or the state or municipality does not issue such a certificate, a statement to that effect; or
- Evidence that, after November 29, 1990, the required amount of capital for the area in which an enterprise is located has been transferred to an existing business, and that the investment has resulted in a substantial increase in the net worth or number of employees of the business to which the capital was transferred.

  This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth or number of employees.[78]

4. Investment in New Commercial Enterprise

To show that the immigrant investor has committed the required amount of capital to the new commercial enterprise, the evidence presented may include, but is not limited to, the following:

- Bank statements showing amounts deposited in U.S. business accounts for the enterprise;
- Evidence of assets which have been purchased for use in the U.S. enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
- Evidence of property transferred from abroad for use in the U.S. enterprise, including U.S. Customs and Border Protection commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing secured by the immigrant investor's assets, other than those of the new commercial enterprise, and for which the immigrant investor is personally and primarily liable.[79]

5. Engagement in Management of New Commercial Enterprise

The immigrant investor must be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial responsibility or through policy formulation.[80]

To show that the immigrant investor is or will be engaged in the exercise of day-to-day managerial control or policy formulation, the immigrant investor must submit:

- A statement of the position title that the immigrant investor has or will have in the new enterprise and a complete description of the position's duties;[81]
- Evidence that the immigrant investor is a corporate officer or a member of the corporate board of directors;[82]
- For petitions filed before November 21, 2019, if the new enterprise is a partnership, either limited or general, evidence that the immigrant investor is engaged in either direct management or policymaking activities. The immigrant investor is sufficiently engaged in the management of the new commercial enterprise if the investor is a limited partner and the limited partnership agreement provides the investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act;[83] or

- For petitions filed on or after November 21, 2019, evidence that the petitioner is engaged in policymaking activities, including evidence that the petitioner is an equity holder in the new commercial enterprise and the organizational documents of the new commercial enterprise provide the petitioner with certain rights, powers, and duties normally granted to equity holders of the new commercial enterprise's type of entity in the jurisdiction in which the new commercial enterprise is organized.[84]

D. Creation of Jobs

The creation of jobs for U.S. workers is a critical element of EB-5. It is not enough that the immigrant investor invests funds into the U.S. economy. The investment of the required amount of capital must be in a new commercial enterprise that creates[85] at least 10 jobs for qualifying employees. It is important to recognize that while the investment must result in the creation of jobs for qualifying employees, it is the new commercial enterprise that creates the jobs.[86]

Example: Non-Regional Center

Ten non-regional center immigrant investors seek to establish a hotel as their new commercial enterprise. The establishment of the new hotel requires capital to pay financing costs to unrelated third parties, purchase the land, develop the plans, obtain the licenses, build the structure, maintain the grounds, staff the hotel, as well as many other types of expenses involved in the development and operation of a new hotel.

The non-regional center immigrant investor's capital can be used to pay part or all of these expenses. Each non-regional center immigrant investor's investment of capital helps the new commercial enterprise (the new hotel) create 10 jobs. The 10 immigrants' investments must result in the new hotel's creation of 100 jobs (10 jobs for each investor's capital investment) for qualifying employees.[87]

1. Bridge Financing

A developer or principal of a new commercial enterprise, either directly or through a separate job-creating entity, may use interim, temporary, or bridge financing, in the form of either debt or equity, prior to receipt of immigrant investor capital. If the project starts based on the interim or bridge financing prior to receiving immigrant investor capital and subsequently replaces that financing with immigrant investor capital, the new commercial enterprise may still receive credit for the job creation under the regulations.

Generally, the replacement of temporary or bridge financing with immigrant investor capital should have been contemplated prior to acquiring the original temporary financing. However, even if the immigrant investor financing was not contemplated prior to acquiring the temporary financing, as long as the financing to be replaced was contemplated as short-term temporary financing that would be subsequently replaced by more permanent long-term financing, the infusion of immigrant investor financing could still result in the creation of, and credit for, new jobs.

For example, if traditional financing originally contemplated to replace the temporary financing is

no longer available to the commercial enterprise, a developer is not precluded from using immigrant investor capital as an alternative source. Immigrant investor capital may replace temporary financing even if this arrangement was not contemplated prior to obtaining the bridge or temporary financing.

The full amount of the immigrant's investment must be made available to the business or businesses most closely responsible for creating the jobs upon which eligibility is based. In the regional center context if the new commercial enterprise is not the job-creating entity, then the full amount of the capital must be invested first in the new commercial enterprise and then made available to the job-creating entity or entities.[88]

2. Multiple Job-Creating Entities

If invested in a single new commercial enterprise and where the offering and organizational documents provide, an investor's full investment may be distributed to more than one job-creating entity in a portfolio investment strategy. The record must demonstrate that the new commercial enterprise will create the requisite jobs through the portfolio of projects. In addition, each investor must demonstrate that the full amount of money is made available to the business(es) most closely responsible for creating the employment upon which the petition is based, which may be one or multiple job-creating entities in a portfolio.

3. Full-Time Positions for Qualifying Employees

The investment into a new commercial enterprise must create full-time positions for not fewer than 10 qualifying employees.[89] An employee is defined as a person who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Regional Center Program, an employee also means a person who provides services or labor in a job that has been created indirectly through investment in the new commercial enterprise.[90]

Qualifying Employee

For the purpose of the job creation requirement, the employee must be a qualifying employee. A qualifying employee is a U.S. citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized for employment in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or a noncitizen remaining in the United States under suspension of deportation. This definition does not include the immigrant investor, the immigrant investor's spouse, sons, daughters, or any nonimmigrant.[91]

Full-Time Employment

For the purpose of the job creation requirement, the position must be a full-time employment position.[92] Full-time employment is defined as employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.[93] In the case of the Regional Center Program, full-time employment also means employment of a qualifying employee in a position that has been created indirectly that requires a minimum of 35 working hours per week.

Two or more qualifying employees can fill a full-time employment position in a job sharing arrangement. Job sharing is permissible so long as the 35 working hours per week requirement is met. However, the definition of full-time employment does not include combinations of part-time positions, even if those positions when combined meet the hourly requirement per week.[94]

A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. To demonstrate that a full-time position is shared by more than one employee, the following evidence, among others, may be relevant:

- A written job-sharing agreement;
- A weekly schedule that identifies the positions subject to a job sharing arrangement and the hours to be worked by each employee under the job sharing arrangement; and
- Evidence of the sharing of the responsibilities or benefits of a permanent, full-time position between the employees subject to the job sharing arrangement.

Jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last at least 2 years are generally not considered intermittent, temporary, seasonal, or transient in nature.

4. Measuring Job Creation

The immigrant investor seeking to enter the United States through the EB-5 Program must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees. There are three methods of measuring job creation depending on the new commercial enterprise and where it is located.

Troubled Business

The U.S. economy benefits when the immigrant investor's capital helps preserve the troubled business's existing jobs. If the immigrant investor is investing in a new commercial enterprise that is a troubled business, he or she must show that the number of existing employees in the troubled business is being, or will be, maintained at no less than the pre-investment level for a period of at least 2 years.[95] This applies in the regional center context as well.

The troubled business regulatory provision does not decrease the number of jobs required. An immigrant investor who invests in a troubled business must still demonstrate that 10 jobs have been preserved, created, or some combination of the two. For example, an investment in a troubled business that creates four qualifying jobs and preserves all six pre-investment jobs would satisfy the job creation requirement.

The regulatory definition of a troubled business is a business that has:

- Been in existence for at least 2 years;
- Has incurred a net loss for accounting purposes (determined on the basis of generally accepted

accounting principles) during the 12-month or 24-month period prior to the priority date on the Immigrant Petition by Alien Investor (Form I-526); and

- Had a loss for the same period at least equal to 20 percent of the troubled business's net worth prior to the loss.[96]

For purposes of determining whether or not the troubled business has been in existence for 2 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.[97]

New Commercial Enterprise Not Located Within a Regional Center

For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.[98]

New Commercial Enterprise Located Within a Regional Center

Full-time positions can be created either directly or indirectly by a new commercial enterprise located within a designated regional center.[99] The general EB-5 program requirements still apply to investors investing in new commercial enterprises in the regional center context except that they may rely on indirect job creation. Employees filling indirect jobs do not work directly for the new commercial enterprise. Immigrant investors must use reasonable methodologies to establish the number of indirect jobs created.[100]

Direct jobs are those jobs that establish an employer-employee relationship between the new commercial enterprise and the persons it employs. Indirect jobs are those that are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise. For example, indirect jobs can include, but are not limited to, those held by employees of the job-creating entity (when the job-creating entity is not the new commercial enterprise) as well as employees of producers of materials, equipment, or services used by the new commercial enterprise or job-creating entity.

In addition, a sub-set of indirect jobs, known as induced jobs, are created when the new direct and indirect employees spend their earnings on consumer goods and services. Indirect jobs can qualify and be counted as jobs attributable to a new commercial enterprise associated with a regional center, based on reasonable methodologies, even if the jobs are located outside of the geographic boundaries of a regional center.

Due to the nature of accepted job creation modeling practices, USCIS relies upon reasonable economic models to determine that it is more likely than not that the indirect jobs are created. USCIS may request additional evidence that the indirect jobs created, or to be created, are full time. USCIS may also request additional evidence to verify that the direct jobs (those held at the new commercial enterprise) will be or are full-time and permanent, which may include a review of W-2 forms or similar evidence.

Multiple Investors

When there are multiple investors in a new commercial enterprise, the total number of full-time positions created for qualifying employees will be allocated only to those immigrant investors who have used the establishment of the new commercial enterprise as the basis for their immigrant petition. An allocation does not need to be made among persons not seeking classification through the employment based fifth preference category. Also, jobs need not be allocated to non-natural persons, such as corporations investing in a new commercial enterprise.[101] Full-time positions will be allocated to immigrant investors based on the date their petition to remove conditions was filed, unless otherwise stated in the relevant documents.[102]

In general, multiple immigrant investors may not claim credit for the same job. An immigrant investor may not seek credit for the same specifically identified job position that has already been allocated to another immigrant investor in a previously approved case.

5. Evidence of Job Creation

To show that a new commercial enterprise will create not fewer than 10 full-time positions for qualifying employees, an immigrant investor must submit the following evidence:

- Documentation consisting of photocopies of relevant tax records, Employment Eligibility Verification (Form I-9), or other similar documents for 10 qualifying employees, if such employees have already been hired; or
- A copy of 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 qualifying employees will result within the next 2 years and the approximate dates employees will be hired.[103]

The 2-year period[104] is deemed to begin 6 months after adjudication of Form I-526. The business plan filed with the immigrant petition should reasonably demonstrate that the requisite number of jobs will be created by the end of this 2-year period.

Troubled Business

In the case of a troubled business, a comprehensive business plan must accompany the other required evidentiary documents.[105]

Regional Center Investors

In the case of a new commercial enterprise within a regional center, the direct or indirect job creation may be demonstrated by the types of documents identified in this section along with reasonable methodologies.[106] If a regional center immigrant investor seeks to rely on jobs that will be created to satisfy the job creation requirement, a comprehensive business plan is required.

Additionally, if the regional center immigrant investor seeks to demonstrate job creation through the use of an economic input-output model, USCIS requires the investor to demonstrate that the methodology is reasonable. For example, if the inputs into the input-output model reflect jobs created directly at the new commercial enterprise or job-creating entity, USCIS requires the investor to demonstrate that the direct jobs input is reasonable. Relevant documentation may include Form I-9, tax or payroll records or if the jobs are not yet in existence, a comprehensive business plan

demonstrating how many jobs will be created and when the jobs will be created.

If the inputs into the model reflect expenditures, USCIS requires the investor to demonstrate that the expenditures input is reasonable. Relevant documentation may include receipts and other financial records for expenditures that have occurred and a detailed projection of sales, costs, and income projections such as a pro-forma cash flow statement associated with the business plan for expenditures that will occur.

If the inputs into the model reflect revenues, USCIS requires the investor to demonstrate that the revenues input is reasonable. Relevant documentation may include tax or other financial records for revenues that have occurred or a detailed projection of sales, costs, and income projections such as a pro-forma income statement associated with the business plan for revenues that will occur.

In reviewing whether an economic methodology is reasonable, USCIS analyzes whether the multipliers and assumptions about the geographic impact of the project are reasonable. For example, when reviewing the geographic level of the multipliers used in an input-output model, the following factors, among others, may be considered:

- The area's demographic structure (for example, labor pool supply, work force rate, population growth, and population density);
- The area's contribution to supply chains of the project; and
- Connectivity with respect to socioeconomic variables in the area (for example, income level and purchasing power).

6. Rescission of Guidance on Tenant Occupancy Methodology

As of May 15, 2018, USCIS rescinded its prior guidance on tenant occupancy methodology. That update applies to all USCIS employees with respect to determinations of all Immigrant Petitions by Alien Investors (Form I-526), Petitions by Investors to Remove Conditions on Permanent Resident Status (Form I-829), and Applications for Regional Center Designation Under the Immigrant Investor Program (Form I-924) filed on or after that date. USCIS also gives deference to Form I-526 and Form I-829 petitions directly related to projects approved before May 15, 2018, absent material change, fraud or misrepresentation, or legal deficiency of the prior determination.[107]

Previously, on December 20, 2012, USCIS had issued policy guidance defining the criteria to be used in the adjudication of applications and petitions relying on tenant occupancy to establish indirect jobs.[108] In November 2016, USCIS published consolidated policy guidance on immigrant investors in this Policy Manual, including guidance on the tenant occupancy methodology. That guidance provided that investors could (1) map a specific amount of direct, imputed, or subsidized investment to new jobs, or (2) use a facilitation-based approach to demonstrate the project would remove a significant market-based constraint.

The first method requires mapping a specific amount of direct, imputed, or subsidized investment to new jobs such that there is an equity or direct financial connection between the EB-5 capital investment and the employees of prospective tenants. In practice, however, the construction of

standard office or retail space alone does not lead to a sufficient connection for this type of mapping such that tenant jobs can be credited to the new commercial enterprise. The existence of numerous other factors, such as the identity of future tenants and demand for that type of business, makes it difficult to relate individual jobs to a specific space.

The second method looks at whether the investment removes a significant market-based constraint, referred to in the 2012 guidance as the "facilitation based approach." In providing this approach as an option, USCIS explicitly allowed applicants and petitioners to avoid having to establish an equity or direct financial connection between the EB-5 capital investment and the employees of prospective tenants. As of May 15, 2018, however, USCIS determined that that allowance was ill-advised, because a direct financial connection between the EB-5 capital investment and the job creation is necessary to determine a sufficient nexus between the two. Reliance on a showing of constraint on supply or excess of demand by itself does not establish a causal link between specific space and a net new labor demand such that it would overcome the lack of a sufficient nexus.

Moreover, allowing applicants and petitioners to use prospective tenant jobs as direct inputs into regional growth models to generate the number of indirect and induced jobs that result from the credited tenant jobs leads to a more attenuated and less verifiable connection to the investment. There is also no reasonable test to confirm that jobs claimed through either tenant-occupancy methodology are new rather than relocated jobs such that they should qualify as direct inputs in the first place.

In sum, tenant-occupancy methodologies described in the 2012 Operational Guidance and previously incorporated into the Policy Manual result in a connection or nexus between the investment and jobs that is too tenuous[109] and thus are no longer considered reasonable methodologies or valid forecasting tools under the regulations.[110]

E. Burden of Proof

The petitioner or applicant must establish each element by a preponderance of the evidence.[111] The petitioner or applicant does not need to remove all doubt. Even if an officer has some doubt as to the truth, if the petitioner or applicant submits relevant, probative, and credible evidence that leads to the conclusion that the claim is more likely than not (that is, probably true), the petitioner or applicant has satisfied the preponderance of evidence standard.

F. Priority Dates

Under certain circumstances, the petitioner may use the priority date of a previously approved Immigrant Petition by Alien Investor (Form I-526) for purposes of a subsequent Form I-526 filed on or after November 21, 2019, for which the petitioner qualifies.[112]

Footnotes

[^ 1] See 8 CFR 204.6(e).

[^ 2] See 8 CFR 204.6(e).

[^ 3] See *Matter of Ho (PDF)*, 22 I&N Dec. 206 (Assoc. Comm. 1998).

[^ 4] See INA 203(b)(5). See 8 CFR 204.6(e).

[^ 5] See 8 CFR 204.6(j)(3).

[^ 6] Perfecting a security interest relates to the additional steps required to make a security interest effective against third parties or to retain its effectiveness in the event of default by the grantor of the security interest.

[^ 7] See *Matter of Hsiung (PDF)*, 22 I&N Dec. 201, 202 (Assoc. Comm. 1998).

[^ 8] See *Matter of Hsiung (PDF)*, 22 I&N Dec. 201, 202-03 (Assoc. Comm. 1998).

[^ 9] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 193-94 (Assoc. Comm. 1998).

[^ 10] See 8 CFR 204.6(e). USCIS no longer follows its interpretation of indebtedness as including the investment of loan proceeds as of November 30, 2018, the date of the district court decision *Zhang v. USCIS*, 978 F.3d 1314 (D.C. Cir. 2020).

[^ 11] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 195 (Assoc. Comm. 1998).

[^ 12] See 8 CFR 204.6(e).

[^ 13] See 8 CFR 204.6(j)(2).

[^ 14] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 180-188 (Assoc. Comm. 1998).

[^ 15] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 184 (Assoc. Comm. 1998).

[^ 16] The full definition of invest is provided at 8 CFR 204.6(e).

[^ 17] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 183-188 (Assoc. Comm. 1998).

[^ 18] EB-5 regulations contain two basic requirements in order to have a legitimate qualifying investment: (1) 8 CFR 204.6(e) defines “invest” to require a qualifying (that is, non-prohibited) contribution of capital; and (2) 8 CFR 204.6(j)(2) requires a qualifying use of such capital (placing such capital at risk for the purpose of generating a return). In order to satisfy the evidentiary requirement set forth at 8 CFR 204.6(j)(2), an investor must first properly contribute capital in accordance with the definition of invest at 8 CFR 204.6(e). If the contribution of capital fails to meet the definition of invest, it is not a qualifying investment, even if it is at risk for the purpose of generating a return.

[^ 19] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 186-187 (Assoc. Comm. 1998).

[^ 20] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). *Matter of Izummi (PDF)* addressed redemption agreements in general, and not only those where the investor holds the right to repayment. USCIS generally disfavors redemption provisions that indicate a

preconceived intent to exit the investment as soon as possible, and notes that one district court has drawn the line at whether the investor holds the right to repayment. See *Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

[^ 21] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169 (185-86) (Assoc. Comm. 1998).

[^ 22] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). See *Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

[^ 23] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998).

[^ 24] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210 (Assoc. Comm. 1998).

[^ 25] See *Matter of Izummi (PDF)*, 22 I&N 169, 179, 189 (Assoc. Comm. 1998).

[^ 26] A job-creating entity is most closely responsible for creating the employment upon which the petition is based. See *Matter of Izummi (PDF)*, 22 I&NDec. 169, 179 (Assoc. Comm. 1998). In some circumstances, the new commercial enterprise may also be the job-creating entity.

[^ 27] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 178-79 (Assoc. Comm. 1998).

[^ 28] See 8 CFR 204.6(j)(2).

[^ 29] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210 (Assoc. Comm. 1998).

[^ 30] When funds are held in escrow outside the United States, USCIS reviews currency exchange rates at the time of adjudicating the Form I-526 petition to determine if it is more likely than not that the petitioner will make the minimum qualifying capital investment. With the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829), USCIS reviews the evidence in the record, including currency exchange rates at the time of transfer, to determine that, when the funds were actually transferred to the United States, the petitioner actually made the minimum qualifying capital investment.

[^ 31] See Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829).

[^ 32] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

[^ 33] See 8 CFR 204.6(e).

[^ 34] Based on an internal review and analysis of typical EB-5 capital deployment structures, USCIS generally considers 12 months to be a reasonable amount of time to further deploy capital for most types of commercial enterprises but will consider evidence showing that a longer period was reasonable for a specific type of commercial enterprise or into a specific commercial activity under the totality of the circumstances.

[^ 35] The requirement to make the full amount of capital available to the business or businesses most closely responsible for creating the employment upon which the petition is based is generally satisfied through the initial deployment of capital resulting in the creation of the required number

of jobs.

[^ 36] See 8 CFR 204.6(e) for the definition of commercial enterprise.

[^ 37] This clarification is meant to address potential confusion among stakeholders regarding prior language about the "scope" of the new commercial enterprise while remaining consistent with applicable eligibility requirements.

[^ 38] See 8 CFR 103.2(b)(1). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 175-6, 189 (Assoc. Comm. 1998). See Chapter 4, Immigrant Petition by Alien Investor (Form I-526), Section C, Material Change [6 USCIS-PM G.4(C)].

[^ 39] See INA 203(b)(5)(A), which refers to a single new commercial enterprise: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise."

[^ 40] See 8 CFR 204.6(j) which refers to a single regional center: "In the case of petitions submitted under the Immigrant Investor . . . Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital . . . within a regional center designated by the Service." See 8 CFR 204.6(m)(7) which refers to a single regional center: "An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor . . . Program must demonstrate that his or her qualifying investment is within a regional center."

[^ 41] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

[^ 42] See INA 203(b)(5)(C). See 8 CFR 204.6(e)-(f).

[^ 43] See 8 CFR 204.6(f). See 84 FR 35750, 35808 (PDF) (July 24, 2019).

[^ 44] The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based. See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998).

[^ 45] See 8 CFR 204.6(e).

[^ 46] See 8 CFR 204.6(j)(3). See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998).

[^ 47] See 8 CFR 204.6(e).

[^ 48] See 8 CFR 204.6(e) and 8 CFR 204.6(j)(3).

[^ 49] See 8 CFR 204.6(j)(3).

[^ 50] As required under 8 CFR 204.6(j)(3)(ii).

[^ 51] See INA 203(b)(5)(B)(ii).

[^ 52] See INA 203(b)(5)(B)(iii). See 8 CFR 204.6(e).

[^ 53] See INA 203(b)(5)(B)(ii). See 8 CFR 204.6(e).

[^ 54] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 174 (Assoc. Comm. 1998).

[^ 55] See 8 CFR 204.6(j)(6). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 171-73 (Assoc. Comm. 1998).

[^ 56] See 8 CFR 204.6(j)(6)(i).

[^ 57] See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).

[^ 58] See 8 CFR 204.6(j)(6)(ii)(A) (PDF) (in effect before November 21, 2019).

[^ 59] See 8 CFR 204.6(j)(6)(ii)(A).

[^ 60] USCIS makes designations as part of the petition adjudication and does not issue separate designation notices. See 84 FR 35750, 35809 (PDF) (July 24, 2019). See 8 CFR 204.6(j)(6)(ii)(A).

[^ 61] See 8 CFR 204.6(j)(6)(i). See 8 CFR 204.6(j)(6)(ii)(B).

[^ 62] See 8 CFR 204.6(j)(6)(i).

[^ 63] See 8 CFR 204.6(j)(6)(i) (PDF) (in effect before November 21, 2019).

[^ 64] See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).

[^ 65] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

[^ 66] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

[^ 67] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

[^ 68] See 8 CFR 204.6(e).

[^ 69] See 8 CFR 204.6(e).

[^ 70] See 8 CFR 204.6(e).

[^ 71] See 8 CFR 204.6(e).

[^ 72] See 8 CFR 204.6(h)(2).

[^ 73] See *Matter of Soffici (PDF)*, 22 I&N Dec. 158 (Assoc. Comm. 1998).

[^ 74] See 8 CFR 204.6(h)(3).

[^ 75] See 8 CFR 204.6(h)(3).

[^ 76] See 8 CFR 204.6(h)(3).

[^ 77] See 8 CFR 204.6(g).

[^ 78] See 8 CFR 204.6(j)-(j)(1).

[^ 79] See 8 CFR 204.6(j)(2)(i)-(v).

[^ 80] See 8 CFR 204.6(j)(5).

[^ 81] See 8 CFR 204.6(j)(5)(i).

[^ 82] See 8 CFR 204.6(j)(5)(i).

[^ 83] See 8 CFR 204.6(j)(5)(iii) (PDF) (as in effect before November 21, 2019). As explained in the EB-5 Immigrant Investor Program Modernization Notice of Proposed Rulemaking (NPRM), 82 FR 4738 (PDF) (Jan. 13, 2017), clarifications were necessary to conform this clause—as well as other parts of 8 CFR 204.6(j)(5)—with amendments made by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF) (November 2, 2002) to INA 203(b)(5). In particular, the amendment made by Public Law 107-273 to INA 203(b)(5) expressly permitting limited partnerships as new commercial enterprises was not intended to restrict investor choice with respect to the type of entity used in investment structuring, but was intended to permit flexibility in the administration of the EB-5 program with respect to the use of different entity types (including the longstanding use of limited liability companies with structures analogous to limited partnerships). Accordingly, 8 CFR 204.6(j)(5) was revised to clarify and conform existing regulations with the statutory requirements of INA 203(b)(5), as amended by Public 107-273.

[^ 84] See 84 FR 35750, 35809 (PDF) (July 24, 2019). See 8 CFR 204.6(j)(5)(iii).

[^ 85] Job maintenance is also permitted under certain circumstances. See Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].

[^ 86] See 8 CFR 204.6(j)(4)(i).

[^ 87] See 8 CFR 204.6(j) (It is the new commercial enterprise that will create the 10 jobs).

[^ 88] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998).

[^ 89] See 8 CFR 204.6(j).

[^ 90] See 8 CFR 204.6(e).

[^ 91] See 8 CFR 204.6(e).

[^ 92] See INA 203(b)(5)(A)(ii).

[^ 93] See INA 203(b)(5)(D). See 8 CFR 204.6(e).

[^ 94] See 8 CFR 204.6(e).

[^ 95] See 8 CFR 204.6(j)(4)(ii).

[^ 96] See 8 CFR 204.6(j)(4)(ii).

[^ 97] See 8 CFR 204.6(e).

[^ 98] See 8 CFR 204.6(e).

[^ 99] See 8 CFR 204.6(j)(4)(iii).

[^ 100] See 8 CFR 204.6(m)(1). See 8 CFR 204.6(m)(7).

[^ 101] See 8 CFR 204.6(g)(2).

[^ 102] USCIS recognizes any reasonable agreement made among immigrant investors in regard to the identification and allocation of qualifying positions. See 8 CFR 204.6(g)(2).

[^ 103] See 8 CFR 204.6(j)(4)(i).

[^ 104] The 2-year period is described in 8 CFR 204.6(j)(4)(i)(B).

[^ 105] See 8 CFR 204.6(j)(4)(ii).

[^ 106] See 8 CFR 204.6(j)(4)(iii).

[^ 107] See Chapter 6, Deference [6 USCIS-PM G.6].

[^ 108] See Operational Guidance for EB-5 Cases Involving Tenant-Occupancy, GM-602-0001, issued December 20, 2012.

[^ 109] See, for example, *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998) (holding that the full amount of the money must be made available to the business(es) most closely responsible for creating the employment on which the petition is based).

[^ 110] See 8 CFR 204.6(j)(4)(iii) and (m)(3).

[^ 111] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 375-376 (AAO 2010).

[^ 112] See 84 FR 35750, 35808 (PDF) (July 24, 2019). See 8 CFR 204.6(d). For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 3, Priority Dates [7 USCIS-PM A.6(C)(3)]. For general information on limited visa availability, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 2, Numerically Limited Visa Availability [7 USCIS-PM A.6(C)(2)].

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Chapter 3 - Regional Center Designation, Reporting, Amendments, and Termination

Guidance

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History (1)

ALERT: On June 22, 2021, the U.S. District Court for the Northern District of California, in *Behring Regional Center LLC v. Wolf*, 20-cv-09263-JSC, vacated the EB-5 Immigrant Investor Program Modernization Final Rule (PDF). While USCIS considers this decision, we will apply the EB-5 regulations that were in effect before the rule was finalized on Nov. 21, 2019, including:

- No priority date retention based on an approved Form I-526;
- The required standard minimum investment amount of $1 million and the minimum investment amount for investment in a Targeted Employment Area (TEA) of $500,000;
- Permitting state designations of high unemployment TEAs; and
- Prior USCIS procedures for the removal of conditions on permanent residence.

In other words, we are applying the regulations in effect before Nov. 21, 2019 in this chapter.

ALERT: Statutory authorization related to the EB-5 Immigrant Investor Regional Center Program expired at midnight on June 30, 2021. This lapse in authorization does not

affect EB-5 petitions filed by investors who are not seeking a visa under the Regional Center Program. Due to the lapse in authorization related to the Regional Center Program, USCIS will reject the following forms received on or after July 1, 2021:

- Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program, except when the application type indicates that it is an amendment to the regional center's name, organizational structure, ownership, or administration; and
- Form I-526, Immigrant Petition by Alien Investor, when it indicates that the petitioner's investment is associated with an approved regional center.

In general, we will not act on any pending petition or application of these form types that is dependent on the lapsed statutory authority until further notice.

The goal of the Regional Center Program is to stimulate economic growth in a specified geographic area. The regional center model can offer an immigrant investor already defined investment opportunities, thereby reducing the immigrant investor's responsibility to identify acceptable investment vehicles. If the new commercial enterprise is located within the geographic area, and falls within the economic scope of the defined regional center, reasonable methodologies can be used to demonstrate indirect job creation.[1] A regional center can be associated with one or more new commercial enterprises.

A regional center seeking to participate in the Regional Center Program must submit a proposal using the Application For Regional Center Under the Immigrant Investor Program (Form I-924).

USCIS may designate a regional center based on a general proposal for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. The statute further provides that a regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.

In addition, the establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have on the area.[2]

The regulations state that the proposal must:

- Clearly describe how the regional center focuses on a geographical region of the United States and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;
- Provide in verifiable detail how jobs will be created directly or indirectly;
- Provide a detailed statement regarding the amounts and sources of capital which have been already committed to the regional center;

- Provide a description of the promotional efforts taken and planned by the sponsors of the regional center;
- Include a detailed prediction[3] how the regional center will have a positive impact on the regional or national economy based on factors such as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and
- Be supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, or multiplier tables.[4]

The level of verifiable detail required for a Form I-924 to be approved and provided deference may vary depending on the nature of the application filing.[5]

A. Regional Center Application Proposals

The regional center proposal must include a management and operational plan to administer, oversee, and manage the proposed regional center, including but not limited to how the regional center:

- Will be promoted to attract immigrant investors, including a description of the budget for promotional activities;
- Will identify, assess, and evaluate proposed immigrant investor projects and enterprises;
- Characterizes the structure of the investment capital it will sponsor; for example, whether the investment capital to be sought for job-creating companies will consist solely of immigrant investor capital or a combination of immigrant investor capital and domestic capital, and how the distribution of the investment capital will be structured (for example, loans to developers or venture capital); and
- Will oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center.

Geographic Area

An officer reviews the proposed geographic boundaries of a new regional center to determine if they are acceptable. USCIS considers geographic boundaries acceptable if the regional center applicant can establish by a preponderance of the evidence that the proposed economic activity will promote economic growth in the proposed area.[6] The determination is fact-specific, and the law does not require any particular form of evidence, such as a county-by-county analysis.

In addition, a regional center's geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones.[7] To demonstrate that the proposed geographic area is limited, the regional center applicant should submit evidence demonstrating the linkages between proposed economic activities within the proposed area based on different variables. Examples of variables to demonstrate linkages between economic activities

can include but are not limited to:

- Regional connectivity;
- The labor pool and supply chain; and
- Interdependence between projects.

Moreover, in assessing the likelihood that the proposed economic activity will promote economic growth in the proposed geographic area, an officer reviews the impact of the activity relative to relevant economic conditions. The size of the proposed area should be limited and consistent with the scope and scale of the proposed economic activity, as the regional center applicant is required to focus on a geographical region of the United States.[8] The regional center applicant must present an economic analysis of its proposed economic activity in the proposed geographic area that is supported by economically or statistically valid forecasting tools.[9] The Form I-924 instructions provide further information regarding the requirements of the economic analysis.

B. Types of Regional Center Projects

An actual project refers to a specific project proposal that is supported by a *Matter of Ho (PDF)* compliant business plan.[10]

A hypothetical project refers to a project proposal that is not supported by a *Matter of Ho (PDF)* compliant business plan.

The term exemplar refers to a sample Immigrant Petition by Alien Investor (Form I-526), filed with Form I-924 for an actual project. This type of regional center proposal contains copies of the commercial enterprise's organizational and transactional documents, which USCIS reviews to determine if they are in compliance with established eligibility requirements.

1. Hypothetical Projects

If the Form I-924 projects are hypothetical projects, general proposals and general predictions may be sufficient to determine that the proposed regional center will more likely than not promote economic growth, improved regional productivity, job creation, and increased domestic capital investment. A regional center applicant seeking review of a hypothetical project should clarify in the Form I-924 submission that the project is hypothetical. General proposals and predictions may include a description of the project parameters, such as:

- Proposed project activities, industries, locations, and timelines;
- A general market analysis of the proposed job creating activities and explanation regarding how the proposed project activities are likely to promote economic growth and create jobs; and
- A description, along with supporting evidence, of the regional center principals' relevant experience and expertise.

While hypothetical project submissions are sufficient for regional center designation, previous determinations based on hypothetical projects will not receive deference. Actual projects will receive a de novo officer review during subsequent filings (for example, through the adjudication of an amended Form I-924 application, including the actual project details or the first Form I-526 immigrant investor petition).

Organizational and transactional supporting documents are not required for a hypothetical project. If a regional center applicant desires a compliance review of organizational and transactional documents, the application must include an actual project with a *Matter of Ho (PDF)* compliant business plan and an exemplar immigrant investor petition.

2. Actual Projects

Applications for regional center designation based on actual projects may require more details than a hypothetical project to demonstrate that the proposal contains verifiable details and is supported by economically or statistically sound forecasting tools. A regional center applicant seeking review of an actual project should clarify in the Form I-924 submission that the project is actual.

Actual projects require a *Matter of Ho (PDF)* compliant comprehensive business plan that provides verifiable detail on how jobs will be created. Absent fraud, willful misrepresentation, or a legal deficiency,[11] USCIS defers to prior determinations based on actual projects when evaluating subsequent filings under the project involving the same material facts and issues.

Organizational and transactional documents for the new commercial enterprise are not required. If a regional center applicant desires review of organizational and transactional documents for program compliance, the regional center application must be accompanied by an exemplar Form I-526 immigrant investor petition.

If regional center applicants opt not to file a Form I-924 amendment, the investor should identify his or her Form I-526 immigrant investor petition as an actual project being presented for the first time. Additionally, the immigrant petition should contain an affirmative statement signed by a regional center principal confirming that the regional center is aware of the specific project being presented for the first time as part of the immigrant investor petition.

In cases where the regional center application is filed based on actual projects that do not contain sufficient verifiable detail, USCIS may approve the projects as hypothetical projects if they contain the requisite general proposals and predictions. The projects approved as hypotheticals, however, do not receive deference in subsequent filings.

In cases where some projects are approvable as actual projects, and others are not approvable or only approvable as hypothetical projects, the approval notice should identify which projects have been approved as actual projects and will be accorded deference. The approval notice should also identify projects that have been approved as hypothetical projects but will not be accorded deference.

3. Exemplar Filings

Regional center applications, based on actual projects, including a Form I-526 immigrant investor exemplar petition, require more details than a hypothetical or actual project submitted without an exemplar. A regional center applicant seeking review of an exemplar should state that the project is an actual project with a Form I-526 exemplar.

Exemplar filings require a *Matter of Ho (PDF)* compliant comprehensive business plan that provides verifiable detail on how jobs will be created, as well as organizational and transactional documents for the new commercial enterprise.

Absent fraud, willful misrepresentation, or a legal deficiency, officer determinations based on exemplar filings are accorded deference in subsequent filings under the project with the same material facts and issues.

While an amended Form I-924 is not required to perfect a hypothetical project once the actual project details are available, some applicants may choose to file an amended Form I-924 application with a Form I-526 exemplar to obtain a favorable determination. These exemplar filings are accorded deference in subsequent related filings, absent material change, fraud, willful misrepresentation, or a legally deficient determination.

C. Regional Center Annual Reporting

Designated regional centers must file a Supplement to Form I-924 (Form I-924A) annually that demonstrates continued eligibility for designation as a regional center in the EB-5 Program.[12] The regional center must file the form within 90 days of the end of the fiscal year (between October 1 and December 29). The Form I-924A instructions specifically list required information that must be submitted.[13]

If the regional center fails to file the required annual report, USCIS issues a Notice of Intent to Terminate (NOIT) to the regional center for failing to provide the required information. This may ultimately result in the termination of the regional center's designation if the regional center fails to respond or does not file a response which adequately demonstrates continued eligibility.

D. Regional Center Amendments

Because businesses' strategies constantly evolve, with new opportunities identified and existing plans improved, a regional center may amend a previously approved designation. The Form I-924 instructions provide information regarding the submission of regional center amendment requests.[14]

To improve processing efficiencies and predictability in subsequent filings, many regional centers may seek to amend the Form I-924 approval to reflect changes in economic analysis and job creation estimates. Such amendments, however, are not required in order for individual investors to proceed with filing the immigrant petitions or petitions to remove conditions on residence based on the additional jobs created, or to be created, in additional industries.

Formal amendments to an approved regional center's designation are not required when a regional center changes its industries of focus, business plans, or economic methodologies; however, a regional center may find it advantageous to seek USCIS approval of such changes before they are adjudicated in individual immigrant investor petitions.

Requests to Change Geographic Area

When a regional center requests to expand its geographic area, the proposed geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones.[15]

Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which requires that a Form I-924 amendment must be filed, and approved, to expand the regional center's geographic area. The Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

If the regional center's geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013.[16] That policy did not require a formal amendment to expand a regional center's geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

E. Termination of a Regional Center Designation

USCIS issues a NOIT if:

- USCIS determines that a regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment; or
- The regional center fails to submit required information to USCIS.[17]

The NOIT will provide the grounds for termination and provide at least 30 days from receipt of the NOIT for the regional center to respond to the allegations in the NOIT. The regional center may offer evidence to contest the allegations in the NOIT. If the regional center overcomes the allegations in the NOIT, USCIS issues a Notice of Reaffirmation that affirms the regional center's designation.

If the regional center fails to overcome the allegations in the NOIT, USCIS terminates the regional center's participation in the Regional Center Program. In this case, USCIS notifies the regional center of the termination, the reasons for termination, and the right to file a motion, appeal, or both. The regional center may appeal the decision to USCIS' Administrative Appeals Office within 30 days after service of notice (33 days, if the notice was mailed).[18]

Footnotes

[^ 1] For a definition of indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs, Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].

[^ 2] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

[^ 3] An applicant can submit a general prediction which addresses the prospective impact of the capital investment projects sponsored by the regional center, regionally or nationally. See Form I-924 instructions.

[^ 4] See 8 CFR 204.6(m)(3).

[^ 5] For more information about the types of regional center projects, see Section B, Types of Regional Center Projects [6 USCIS-PM G.3(B)].

[^ 6] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i) (requiring a clear description of how the regional center focuses on a geographical region of the United States and how it will promote economic growth).

[^ 7] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

[^ 8] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 83.2 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i).

[^ 9] See 8 CFR 204.6(m)(3).

[^ 10] See Chapter 2, Eligibility Requirements, Section B, Comprehensive Business Plan [6 USCIS-PM G.2(B)].

[^ 11] Legal deficiency includes objective mistakes of law or fact made as part of the USCIS adjudication.

[^ 12] See 8 CFR 204.6(m)(6).

[^ 13] See Form I-924A instructions.

[^ 14] See Form I-924 instructions.

[^ 15] For a discussion of an officer's review of a regional center's proposed geographic area, see Section A, Regional Center Application Proposals [6 USCIS-PM G.3(A)].

[^ 16] See EB-5 Adjudication Policy Memo (PDF, 829.48 KB), PM-602-0083, issued May 30, 2013.

[^ 17] See 8 CFR 204.6(m)(6).

[^ 18] See 8 CFR 103.3. See 8 CFR 204.6(m)(6).

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Chapter 4 - Immigrant Petition by Alien Investor (Form I-526)

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Appendices (0)

Updates (9)

History (1)

ALERT: On June 22, 2021, the U.S. District Court for the Northern District of California, in *Behring Regional Center LLC v. Wolf*, 20-cv-09263-JSC, vacated the EB-5 Immigrant Investor Program Modernization Final Rule (PDF). While USCIS considers this decision, we will apply the EB-5 regulations that were in effect before the rule was finalized on Nov. 21, 2019, including:

- No priority date retention based on an approved Form I-526;
- The required standard minimum investment amount of $1 million and the minimum investment amount for investment in a Targeted Employment Area (TEA) of $500,000;
- Permitting state designations of high unemployment TEAs; and
- Prior USCIS procedures for the removal of conditions on permanent residence.

In other words, we are applying the regulations in effect before Nov. 21, 2019 in this chapter.

ALERT: Statutory authorization related to the EB-5 Immigrant Investor Regional Center Program expired at midnight on June 30, 2021. This lapse in authorization does not

affect EB-5 petitions filed by investors who are not seeking a visa under the Regional Center Program. Due to the lapse in authorization related to the Regional Center Program, USCIS will reject the following forms received on or after July 1, 2021:

- Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program, except when the application type indicates that it is an amendment to the regional center's name, organizational structure, ownership, or administration; and
- Form I-526, Immigrant Petition by Alien Investor, when it indicates that the petitioner's investment is associated with an approved regional center.

In general, we will not act on any pending petition or application of these form types that is dependent on the lapsed statutory authority until further notice.

An immigrant investor must file an initial immigrant petition and supporting documentation to receive EB-5 immigrant classification.[1] The immigrant investor will be a conditional permanent resident upon adjustment of status or admission to the United States.[2]

The petitioner must establish he or she meets the following eligibility requirements when filing the Immigrant Petition by Alien Investor (Form I-526):

- The required amount of capital has been invested or is actively in the process of being invested in the new commercial enterprise;
- The investment capital was obtained by the investor through lawful means;
- The new commercial enterprise will create at least 10 full-time positions for qualifying employees; and
- The immigrant investor is or will be engaged in the management of the new commercial enterprise.

If the immigrant investor seeks to qualify based on a reduced (50 percent of the standard minimum) investment amount, it is necessary to show the new commercial enterprise or job-creating entity, as applicable, is principally doing business in a TEA.

At the preliminary Form I-526 filing stage, the immigrant investor must demonstrate his or her commitment to invest the capital, but does not need to establish the required capital already has been fully invested. The investment requirement is met if the immigrant investor demonstrates that he or she is actively in the process of investing the required capital. However, evidence of a mere intent to invest or of prospective investment arrangements entailing no present commitment will not suffice.[3]

At this preliminary stage, the immigrant investor does not need to establish the required jobs have already been created. The job creation requirement is met by the immigrant investor demonstrating it is more likely than not the required jobs will be created.[4]

A. Petitions Associated with Regional Centers

Each regional center investor must demonstrate that he or she has invested, or is actively in the process of investing, lawfully obtained capital in a new commercial enterprise located within a designated regional center in the United States. The investor must also demonstrate that this investment will create at least 10 direct or indirect full-time jobs for qualifying employees.

As part of the determination of whether a regional center investor has invested, or is actively in the process of investing, in a new commercial enterprise located within a regional center, an officer reviews the regional center's geographic boundaries. If the regional center has requested to expand its geographic area, USCIS adjudicates the petition based on the following:

- Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which require that a Form I-924 amendment must be filed, and approved, to expand the regional center's geographic area. The Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

- If the regional center's geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013.[5] That policy did not require a formal amendment to expand a regional center's geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

The immigrant investor must provide a copy of the regional center's most recently issued approval letter. In addition, if the immigrant investor is relying on previously approved project-specific documentation (including the comprehensive business plan, economic analysis, and organizational and transactional documents) to satisfy his or her burden of proof, the immigrant investor must submit this documentation with his or her Form I-526 petition. This is required even though the regional center previously submitted and USCIS reviewed the documentation with a regional center's Application for Regional Center Under the Immigrant Investor Program (Form I-924).

When USCIS has evaluated and approved certain aspects of an EB-5 investment, USCIS generally defers to that favorable determination at a subsequent stage in the EB-5 process. USCIS does not, however, defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient.[6]

B. Stand-Alone Petitions

An immigrant investor not associated with a regional center must, together with the petition, demonstrate that he or she has invested, or is actively in the process of investing, lawfully obtained capital in a new commercial enterprise located within the United States that will create at least 10

direct full-time jobs for qualifying employees.

C. Material Change

A petitioner must establish eligibility at the time of filing and a petition cannot be approved if, after filing, the immigrant investor becomes eligible under a new set of facts or circumstances. Changes that are considered material that occur after the filing of an immigrant investor petition will result in the investor's ineligibility if the investor has not obtained conditional permanent resident status.[7]

If material changes occur after the approval of the immigrant petition, but before the investor has obtained conditional permanent residence, such changes would constitute good and sufficient cause to issue a notice of intent to revoke and, if not overcome, would constitute good cause to revoke the approval of the petition. A change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision.[8]

Changes that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material. For example, if at the time of filing the immigrant petition, no jobs have yet been created, but after approval of the immigrant petition and before the investor has obtained conditional permanent resident status, the investment in the new commercial enterprise results in the creation of 10 jobs in accordance with the investor's business plan as filed, such a change would not be considered material.

If the organizational documents for a new commercial enterprise contain a liquidation provision, that does not otherwise constitute an impermissible debt arrangement, the documents may generally be amended to remove such a provision in order to allow the new commercial enterprise to continue to operate through the regional center immigrant investor's period of conditional permanent residence. Such an amendment would generally not be considered a material change because facts related to the immigrant investor's Form I-526 eligibility would not change.

If, at the time of adjudication, the investor is asserting eligibility under a materially different set of facts that did not exist when he or she filed the immigrant petition, the investor must file a new Form I-526 immigrant petition.

Further, if a regional center immigrant investor changes the regional center with which his or her immigrant petition is associated after filing the Form I-526 petition, whether occurring during an initial or further deployment of capital, the change constitutes a material change to the petition. Similarly, the termination of a regional center associated with a regional center immigrant investor's Form I-526 petition constitutes a material change to the petition.[9]

For petitions filed before November 21, 2019, amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based on regulatory changes effective on November 21, 2019, do not independently result in denial or revocation of a petition, provided that the petitioner:

- Was eligible for classification as an employment-based 5th preference immigrant[10] at the time the petition was filed; and

- Is currently eligible for classification as an employment-based 5th preference immigrant, including having no right to withdraw or rescind the investment or commitment to invest into such offering, at the time of adjudication of the petition.[11]

Footnotes

[^ 1] See 8 CFR 204.6(a). See 8 CFR 103.2(b).

[^ 2] See INA 216A(a). For information regarding removal of the conditional basis of the investor's permanent resident status, see Chapter 5, Removal of Conditions [6 USCIS-PM G.5].

[^ 3] See 8 CFR 204.6(j)(2). See *Matter of Ho (PDF)*, 22 I&N Dec. 206 (Assoc. Comm. 1998).

[^ 4] See 8 CFR 204.6(j)(4). See 8 CFR 204.6(m)(7).

[^ 5] See EB-5 Adjudication Policy Memo (PDF, 829.48 KB), PM-602-0083, issued May 30, 2013.

[^ 6] Legally deficient includes objective mistakes of law or fact made as part of the USCIS adjudication.

[^ 7] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). See 8 CFR 103.2(b)(1).

[^ 8] See *Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

[^ 9] See 8 CFR 204.6(j). See 8 CFR 204.6(m)(7).

[^ 10] See INA 203(b)(5).

[^ 11] See 8 CFR 204.6(n). See 84 FR 35750, 35809 (PDF) (July 24, 2019).

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Chapter 5 - Removal of Conditions

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ALERT: On June 22, 2021, the U.S. District Court for the Northern District of California, in *Behring Regional Center LLC v. Wolf*, 20-cv-09263-JSC, vacated the EB-5 Immigrant Investor Program Modernization Final Rule (PDF). While USCIS considers this decision, we will apply the EB-5 regulations that were in effect before the rule was finalized on Nov. 21, 2019, including:

- No priority date retention based on an approved Form I-526;
- The required standard minimum investment amount of $1 million and the minimum investment amount for investment in a Targeted Employment Area (TEA) of $500,000;
- Permitting state designations of high unemployment TEAs; and
- Prior USCIS procedures for the removal of conditions on permanent residence.

In other words, we are applying the regulations in effect before Nov. 21, 2019 in this chapter.

To seek removal of the conditions on permanent resident status, the immigrant investor must file a Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829) within 90 days prior to the 2-year anniversary of the date conditional permanent resident status was granted (for example, adjustment of status application was approved or investor admitted into the United States on an immigrant visa).

The immigrant investor must submit the following evidence with his or her petition to remove conditions:

- Evidence that the immigrant investor invested, or was actively in the process of investing the required capital and sustained the investment throughout the period of the immigrant investor's residence in the United States; and
- Evidence that the new commercial enterprise created or can be expected to create, within a reasonable time, at least 10 full-time positions for qualifying employees.[1] In the case of a troubled business, the investor must submit evidence that the commercial enterprise maintained 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.[2]

A. Evidence of Investment and Sustainment

1. Investment

The petition must be accompanied by evidence that the immigrant investor invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence.[3]

2. Sustainment of the Investment

The immigrant investor must provide evidence that he or she sustained the investment throughout the period of his or her status as a conditional permanent resident of the United States.

USCIS considers the immigrant investor to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement and continuously maintained his or her capital investment over the sustainment period.[4] When filing a petition to remove conditions, the full amount of required capital does not need to have been invested, but the immigrant investor must provide evidence that he or she has substantially met the requirement. The evidence may include, but is not limited to:

- Bank statements;
- Invoices;
- Receipts;
- Contracts;
- Business licenses;
- Federal or state income tax returns; and
- Federal or state quarterly tax statements.[5]

B. Evidence of Job Creation

The immigrant investor can meet the job creation requirement by showing that at least 10 full-time positions for qualifying employees have been created, or will be created within a reasonable time. The non-regional center investor must show that the new commercial enterprise directly created these full-time positions for qualifying employees. The regional center investor may show that these jobs were directly or indirectly created by the new commercial enterprise. The evidence to prove job creation may include, but is not limited to the following:

- For direct jobs created as a result of the immigrant investor's investment, evidence such as payroll records, relevant tax documents, and Employment Eligibility Verification (Form I-9) showing employment by the new commercial enterprise;
- For direct jobs maintained or created in a troubled business, evidence such as payroll records, relevant tax documents, and Form I-9 showing employment at the time of investment and at the time of filing the petition to remove the conditions on residence; or
- For jobs created indirectly as a result of an investment in the regional center context, reasonable methodologies, including multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices.

If the regional center investor seeks to demonstrate job creation through the use of an economic input-output model, the investor must demonstrate that the methodology is reasonable. Further, the investor must submit relevant documents previously submitted with the Immigrant Petition by Alien Investor (Form I-526), including the comprehensive business plan and economic impact analysis, if he or she is relying on such documents to meet his or her burden of proof. This information is necessary to indicate whether there are material changes that would impact deference.

Where the inputs into the model reflect jobs created directly at the new commercial enterprise or job-creating entity, the investor must demonstrate that the direct jobs input is reasonable. Relevant documentation may include Form I-9, tax or payroll records, or if the jobs are not yet in existence, a comprehensive business plan demonstrating how many jobs will be created and when the jobs will be created.

If the inputs into the model reflect expenditures, the investor must demonstrate that the expenditures input is reasonable. Relevant documentation may include receipts and other financial records for expenditures that have occurred and a detailed projection of sales, costs, and income projections such as a pro-forma cash flow statement associated with the business plan for expenditures that will occur.

If the inputs into the model reflect revenues, the investor must demonstrate the revenues input is reasonable. Relevant documentation may include tax or other financial records for revenues that have occurred or a detailed projection of sales, costs, and income projections such as a pro-forma income statement associated with the business plan for revenues that will occur.

In making the determination as to whether or not the immigrant investor has created the requisite

number of jobs, USCIS does not require that the jobs still be in existence at the time of the petition to remove conditions adjudication in order to be credited to the investor. Instead, the job creation requirement is met if the investor can show that at least 10 full-time jobs for qualifying employees were created by the new commercial enterprise as a result of his or her investment and such jobs were considered to be permanent jobs when created.[6]

Full-time positions will be allocated to immigrant investors based on the date their petition to remove conditions was filed, unless otherwise stated in the relevant documents.[7] For example, if the new commercial enterprise creates 25 jobs, yet there are three immigrant investors associated with the new commercial enterprise, and the record is silent on the issue of allocation, the first two immigrant investors to file the petition to remove conditions will each get to count 10 of the 25 jobs. The third immigrant investor to file the petition to remove conditions is allocated the remaining five jobs.

Direct jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last for at least 2 years generally are not considered intermittent, temporary, seasonal, or transient in nature.

Although employment in some industries such as construction or tourism can be intermittent, temporary, seasonal or transient, officers should not exclude jobs simply because they fall into such industries. The focus of the adjudication will continue to be on whether the position, as described in the petition, is continuous full-time employment.

For example, if a petition reasonably describes the need for general laborers in a construction project that is expected to last several years and would require a minimum of 35 hours per week over the course of that project, the positions would meet the full-time employment requirement. However, if the same project called for electrical workers to provide services during a small number of 5-week periods over the course of the project, such positions would be deemed intermittent and not meet the definition of full-time employment.

1. Position Focused, Not Employee Focused

The full-time employment criterion focuses on the position, not the employee. Accordingly, the fact that the position may be filled by more than one employee does not exclude the position from consideration as full-time employment. For example, the positions described in the preceding paragraph would not be excluded from being considered full-time employment if the general laborers needed to fill the positions varied from day-to-day or week-to-week as long as the need for the positions remain constant.

2. Within a Reasonable Time Standard

A petitioner may demonstrate that jobs will be created within a reasonable period of time after adjudication of the Form I-829 petition.[8] This permits a degree of flexibility to account for the realities and unpredictability of starting a business venture, but it is not an open-ended allowance. The business plan submitted with the Form I-526 immigrant petition must establish a likelihood of job creation within the next 2 years,[9] demonstrating an expectation that EB-5 projects will

generally create jobs within such a timeframe.

USCIS may determine, based upon a totality of the circumstances, that a lengthier timeframe is reasonable. USCIS has latitude under the law to request additional evidence concerning those circumstances. Because 2 years is the expected baseline period in which job creation will take place, jobs that will be created within a year of the 2-year anniversary of the immigrant investor's admission as a conditional permanent resident or adjustment to conditional permanent resident may generally be considered to be created within a reasonable period of time.

Jobs projected to be created more than 3 years after the immigrant investor's admission in, or adjustment to, conditional permanent resident status usually will not be considered to be created within a reasonable time unless extreme circumstances [10] are presented.

Not all of the goals of capital investment and job creation need to be fully realized before the conditions on the immigrant investor's status have been removed. The investor must establish that it is more likely than not that the investor is in substantial compliance with the capital requirements and that the jobs will be created within a reasonable time.

C. Material Change

USCIS recognizes the process of carrying out a business plan and creating jobs depends on a wide array of variables of which an investor may not have any control. In order to provide flexibility to meet the realities of the business world, USCIS permits an immigrant investor who has been admitted to the United States on a conditional basis to remove those conditions when circumstances have changed.

An immigrant investor may proceed with the petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the initial Form I-526 immigrant petition, the requirements for the removal of conditions have been satisfied. USCIS does not deny petitions to remove conditions based solely on the failure to adhere to the business plan contained in the Form I-526 immigrant petition. An immigrant investor may pursue alternative business opportunities within an industry category not previously approved for the regional center.

Therefore, during the conditional residence period, an investment may be further deployed in a manner not contemplated in the initial Form I-526, as long as the further deployment otherwise satisfies the requirement to sustain the capital at risk. In addition, further deployment may be an option during the conditional residence period in various circumstances. For example, further deployment may be possible in cases where the requisite jobs were created by the investment in accordance with the business plan, as well as in cases where the requisite jobs were not created in accordance with the original business plan, and even if further deployment had not been contemplated at the time of the Form I-526 filing. For petitions filed before November 21, 2019, amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon regulatory changes effective on November 21, 2019, may not be considered material.[11]

The initial Form I-526 immigrant petition must be filed in good faith and with full intention to follow

the plan outlined in that petition. If the immigrant investor does not demonstrate that he or she filed the immigrant petition in good faith, USCIS may conclude that the investment in the commercial enterprise was made as a means of evading the immigration laws. Under these circumstances, USCIS may terminate the immigrant investor's conditional status.[12]

While USCIS allows this flexibility in Form I-829 filings, nothing in this policy relieves an immigrant investor from the requirements for removal of conditions.[13] Therefore, even in the event of a change in course, an immigrant investor must always be able to demonstrate that:

- The required funds were placed at risk throughout the period of the petitioner's conditional permanent residence in the United States;
- The required amount of capital was made available to the business or businesses most closely responsible for creating jobs (unless the job creation requirement has already been satisfied);
- This at-risk investment was sustained throughout the period of the petitioner's conditional permanent residence in the United States; and
- The investor created (or maintained, if applicable), or can be expected to create within a reasonable period of time, the requisite number of jobs.

Accordingly, if an immigrant investor fails to meet any of these requirements, he or she would not be eligible for removal of conditions.

Further, with respect to the impact of regional center termination, an immigrant investor's conditional permanent resident status, if already obtained, is not automatically terminated if he or she has invested in a new commercial enterprise associated with a regional center that USCIS terminates. The conditional permanent resident investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements, including through reliance on indirect job creation.

D. Extension of Conditional Permanent Residence While Form I-829 is Pending

USCIS automatically extends the conditional permanent resident status of an immigrant investor and certain dependents for 1 year upon receipt of a properly filed Form I-829.[14] The receipt notice along with the immigrant's permanent resident card provides documentation for travel, employment, or other situations in which evidence of conditional permanent resident status is required.

Within 30 days of the expiration of the automatic 1-year extension, or after expiration, a conditional permanent resident with a pending Form I-829 may take his or her receipt notice to the nearest USCIS field office and receive documentation showing his or her status for travel, employment, or other purposes.

In such a case, an officer confirms the immigrant's status and provides the relevant documentation. USCIS continues to extend the conditional permanent resident status until the Form I-829 is

adjudicated.

An immigrant investor whose Form I-829 has been denied may seek review of the denial in removal proceedings.[15] USCIS issues the immigrant a temporary Form I-551 until an order of removal becomes administratively final. An order of removal is administratively final if the decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals.

Footnotes

1. [^ 1] See 8 CFR 216.6(a)(4)(ii)-(iv).

2. [^ 2] See 8 CFR 216.6(a)(4)(iv).

3. [^ 3] See 8 CFR 216.6(a)(4)(ii).

4. [^ 4] See 8 CFR 216.6(c)(1)(iii). The sustainment period is the investor's 2 years of conditional permanent resident status. USCIS reviews the investor's evidence to ensure sustainment of the investment for 2 years from the date the investor obtained conditional permanent residence. An investor does not need to maintain his or her investment beyond the sustainment period.

5. [^ 5] See 8 CFR 216.6(a)(4)(iii).

6. [^ 6] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 212-13 (Assoc. Comm. 1998).

7. [^ 7] USCIS recognizes any reasonable agreement made among immigrant investors with regard to the identification and allocation of qualifying positions. See 8 CFR 204.6(g)(2).

8. [^ 8] See 8 CFR 216.6(a)(4)(iv).

9. [^ 9] See 8 CFR 204.6(j)(4)(i)(B).

10. [^ 10] For example, *force majeure*.

11. [^ 11] See Chapter 4, Immigrant Petition by Alien Investor (Form I-526) [6 USCIS-PM G.4].

12. [^ 12] See INA 216A(b)(1)(A).

13. [^ 13] See INA 216A(d)(1). See 8 CFR 216.6(a)(4).

14. [^ 14] See 8 CFR 216.6(a)(1).

15. [^ 15] See INA 216A(c)(3)(D). See 8 CFR 216.6(d)(2).

Current as of July 22, 2021