

Program

Investment Session

Boot Camp

EB-5 Financing and other Critical Immigration Employment Issues for Hotels

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A. Basics Part I

Various work visas applicable to the hospitality industry

- Non-Immigrant Temporary Visas

Temporary visas allow holders to study, visit or work in the United States. The most used categories are:

- B-1/B-2 - Business or Tourist Visitors
- E-1 / E-2 - Merchants and Investors of the Treaty of Commerce
- F-1 - Student
- H-1B – Specialized Occupation
- J-1 - Exchange Visitors/Interns
- L-1A - Managerial / Executive Transferees
- O – World-class achievement in science, engineering, sports, entertainment, arts, business and more

A. Basics Part II

Financing Opportunities through Immigration

- Immigrant Visas

Permanent visas allow holders to live and work in the United States.

This is permanent residence known colloquially as the “Green Card”. The most used categories are:

- **EB-1-A** - Extraordinary Ability
- **EB-1-C** - Multinational Managers and Executives who have worked for a company outside the United States may obtain a Green Card through a U.S. affiliated company or subsidiary of the foreign entity
- **EB-2** - National Interest Waiver
- **EB-2/EB-3 PERM** (Labor Certification)
- **EB-5** – Investors

NOTE: Family– certain family members may qualify for a Green Card because they are a spouse, parent, son/daughter or brother/sister of a US citizen or permanent resident.

- **E-2 Treaty Investor Qualification (Company or Individual)**

- Must be a national of the Treaty Country
- Substantial investment in US-based company (\$150,000 to unlimited)
- The US company must be majority owned by citizens of the treaty country (at least 50%) who are not Green Card holders or hold other visa categories.

- **E-2 Treaty Investor Employee Qualification**

- E-2 Employee, whether executive/supervisory employee or essential qualified employee;
- **Common Misconception** – 1 Year Foreign Employment Required? Incorrect. Unlike the L-1A, there is no 1-year employment requirement in the foreign company for an E-2 employee candidate;
- The E-2 employee must have the same nationality as the E-2 investor or company;

- **E-2 Treaty Investor, Cont. - Important items to note**

- The Treaty Company must have sufficient capacity to generate sufficient income to not only support the treaty investor and family.
- The **investment amount must be substantial** to ensure the success of the venture. Amounts vary based on business type From as low as \$150,000 to multi million-dollar investments.
- The US company **cannot be a marginal company** (cannot generate only enough income to provide a minimum life for the treaty investor)
- Must **create employment compatible with the business. Have 2 years to do so**
- This visa generally must **be renewed every two years**, but there is no limit to how many times it can be renewed.
- The E-2 visa alone will not lead to a green card.
- **E-2 to EB-5** - Allow the investor to work in the US under the E-2 visa while waiting for the EB-5 to become available

B. Advanced Part II Immigrant Visas

More Detailed Discussion on Using Immigration categories to finance projects in the hospitality Industry.

- **EB-1-C** - Multinational Managers and Executives who have worked for a company outside the United States may obtain a Green Card through a U.S. affiliated company or subsidiary of the foreign entity
- **EB-5** – Investors and Employment Creation

What is the EB-1C Immigrant Visa Petition?

Managers and executives who have worked at least one (1) continuous year of "physical employment" in the past 3 years with the foreign company may come to the U.S. to work at a new or existing U.S. parent, subsidiary, or affiliate in managerial or executive roles, since:

- The American company has been doing business in the US for at least a year; and
- The US company has the financial capacity to pay the employee's annual managerial/executive salary.

Suggestion for an American company to be profitable and have **approximately 20 employees**

- If Start-up = **1 year after obtaining the L-1A visa**
- If Existing Company = can be filed concurrently

I N V E S T M E N T

Panel Discussion: Effect of the EB-5 Reform & Integrity Act 2022

EB-5 Reform and Integrity Act of 2022 (“RIA”), Cont.



**IS EB-5 CAPITAL A RECOGNIZED
FORM OF ALTERNATIVE CAPITAL?**

Protection of Investors



WHAT SIMPLE STEPS CAN BE IMPLEMENTED IN ORDER TO PROVIDE COMFORT TO INVESTORS??

Integrity fees

Cost of EB-5 Capital

1. RIA INCREASED THE INVESTMENT AMOUNT TO \$800,000 AND \$1,0050. WILL THE INCREASED AMOUNT REDUCE THE APPETITE OF INVESTORS

ADDITIONAL FEES REQUIRED BOTH FOR DOCUMENTATION AND INTEGRITY MEASURES HAS INCREASED OVERALL EXPENSES.

2. DEMAND FOR HIGH QUALITY PROJECTS. INVESTORS APPETITE FOR HIGH QUALITY PROJECTS EVEN WITH LOWER INTEREST PAYMENTS. SUCH PROJECTS SHOULD SEE LITTLE ADVERSE IMPACT FROM RISING INTEREST RATES WHEN IT COMES TO THE COST OF EB-5 CAPITAL.



The Four Elements of the EB-5 Program

(1) The immigrant's investment of **\$800,000** for investments in Targeted Employment Areas (TEA) OR **\$1,050,000** direct investment

(2) in a **new business (with exceptions)**

(3) that creates at least **10** full time positions for U.S. workers

- Only 90% of jobs may be created indirectly.
- For projects that take less than two (2) years to complete, construction jobs can only qualify for up to 75% of the jobs determined by valid economic methodology.

(4) **Lawful source of funds**

- ✓ Immigrants who invest their capital in a qualifying business that creates at least 10 full-time positions will receive a 2-year conditional green card
- ✓ After two years, the investors files to convert the 2-year green card to become a permanent green card if the investment and job creation requirements have been fulfilled

Source of Funds Documentation and Tracing

- Gifts
- Loans – Banks/Commercials
- Loans – Family/Friends
- Inheritance
- Earnings and savings
- Bonuses and dividends
- Sale of assets, including real estate, stocks and bonds, businesses, artwork, etc.
- Tax including Gift Tax and Licensing Compliance
- Obtain certificate that gift taxes are paid, will be paid or are not payable

Important updates in the EB-5 Reform and Integrity Act of 2022 (“RIA”):

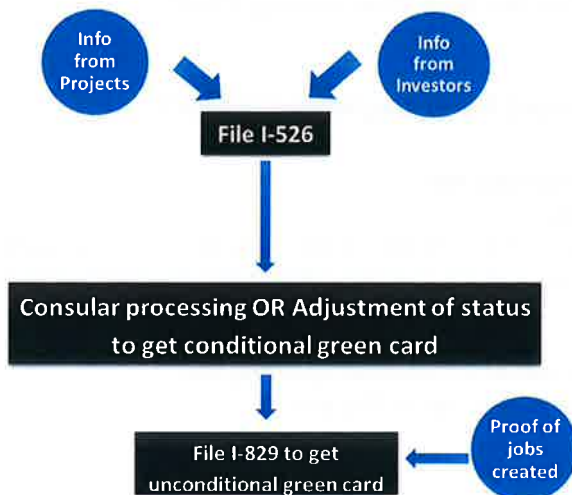
Integrity Measures – To provide greater security to applicants, all individuals involved in the EB-5 program must not have a history of fraud or any other conviction. Investor reporting and federal auditing of Regional Centers will be required.

Protection in the Event of Suspension – To avoid the legal uncertainty that current applicants have faced, this bill ensures that if there is a future suspension of the EB-5 Program, existing applicants will have their petitions processed by USCIS.

Form I-485 Adjustment of Status (AOS)

- Investors can now concurrently file the Form I-485 AOS with the Form I-526 Petition.
- The Form I-485 AOS can now be filed while the Form I-526 Petition is still pending.
- Investors can now file after the Form I-526 Petition is approved and before the priority date is current on the Visa Bulletin (Chart B).
- The investor must be **lawfully in the US and QUALIFIED to file AOS.**

EB-5 Immigration Process – 3 Stages



1) File Form I-526/526E

- if investor is lawfully and qualified in the U.S., I-526/I-526E can be filed concurrently with Adjustment of Status (AOS – Form I-485)
- Form I-485 is also concurrently filed with Forms I-131 and I-765, work (EAD) and Advance Parole travel authorization (AP)
- Several months later the investor will receive EAD and AP while in the US waiting for the I-485 adjudication

2) Receive Conditional Permanent Residence

Adjustment of Status in the US
OR
Consular Processing Out of the US

- File Form DS-260 at the National Visa Center
- Attend an interview at the U.S. Consulate or Embassy

3) File form I-829 to Remove Conditions

Within 90 days of reaching the 2-year conditional period

EB-5 Filing via Regional Center and Processing Time, Cont

How long is the I-526/I-526E processing time?

- I-526 processing times **have increased significantly over the last few years** due to both internal issues with USCIS and COVID-19 shutdowns
- Prior to the increase, it was reasonable to expect for an I-526 petition to be processed in 1 to 2 years
- While it is yet to be seen how long I-526 processing times will be moving forward, the RIA instructs USCIS to complete a study on "timely processing" with **the purpose of decreasing average I-526 processing times to 240 days or less.**
- We are waiting to see how USCIS implements the new laws. We have been promised a faster turn around but have no assurances. Cases can take from one to many more years to complete. We have some cases that have been approved for expedited adjudication.

EB-5 Additional Discussion Topics

1. High quality projects should see little adverse impact from rising interest rates when it comes to the cost of EB-5 capital
2. Why reasonably priced EB-5 capital is best for all parties in an EB-5 transaction. (Remember, the ultimate goals in an EB-5 transaction are the creation of sufficient jobs, a liquidity event such that repayment occurs and the ability of the project to generate some rate of return during the period of investment.)
3. ROI and what it really means to EB-5 investors throughout the period of investment. What other simple steps can be implemented in order to provide comfort to investors?

- **PRACTICAL ISSUES**

- **Timing**
- **Costs:**
 - **New Registration**
 - **Redesignation**
- **Independent GAAP Auditing or appoint a Trust Administrator**
- **Compliance Company Industry Growth**
- **Creative Suggestions for Direct Hiring Investments**

