

Contrary to What AI Says, You Should Avoid an EB-5 Visas if Possible



Immigration Blog

By Eileen M. Martin

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I can tell AI is a fan of the U.S. EB-5 investor green card because I have been receiving a number of questions and calls about it lately. AI and I do not agree on the EB-5.

The EB-5 permits an investor who provides investment funds of US\$800,000 to \$1.05 million (depending on where the investment vehicle may be located) to obtain a conditional green card. This can be through a direct investment managed by the EB-5 investor, or through a vetted and approved Regional Center that manages the funds.

I advise my clients that they should choose any other path to a green card that meets their needs besides the EB-5, if possible. One problem is the process for the EB-5. Often, the process is split between an attorney for a Regional Center and the attorney for the beneficiary. We each have a role to play, and it is difficult to manoeuvre the filing of such an extensive petition between two busy attorneys.

The petition is extensive. If a Regional Center is involved, they will provide a substantial number of documents in

addition to the large number of documents the beneficiary provides. The management of these documents is substantial, including everything being required in a coherent manner.

The beneficiary will have to provide extensive forensic accounting documentation regarding the immediate and ultimate source of funds for the investment and the specific path of the funds used. It can not only be challenging to locate these documents, but it is also a challenge to provide them to the government in a manner that makes sense.

Once filed, the timeline to success is variable. Depending on the investment and its status with U.S. Citizenship and Immigration Services (USCIS), it can take many years to have a green card issued. As an example, a client of our firm filed in 2019, and he does not yet have his green card in hand.

An investor who goes the EB-5 route must be willing to have his or her funds tied up for a long time. This time frame includes the preparation months, the adjudication years and the two years after approval, as there is a requirement to file a petition to show that the funds both (1) remained invested, and (2) resulted in the maintenance or creation of 10 full-time-equivalent jobs as required for those two years. Then there is the adjudication time of months to years for USCIS to assess this last petition and determine if all requirements have been met to remove the condition, after which USCIS finally grants a 10-year unconditional green card.

If investing in a project through a Regional Center, some clients do not like to have someone else control their investment. Many of these investors have started, grown and sold their own businesses and are challenged to give their money to someone else to manage in a business. But they also may not understand the U.S. well enough to start a successful business in a time frame permitted under a work permit, which will then permit a successful EB-5 petition.

Many investors and their families may want to be in the U.S. during the lengthy filing and adjudication process, which will require them to find a status to maintain while their EB-5 application is being processed. This can be challenging, and it can also cause confusion upon entry to the U.S. by U.S. Customs and Border Protection officers. This is because most statuses available to and held by intending immigrants who have applied under the EB-5 program are technically nonimmigrant statuses — raising a conflict of intent.

Nonimmigrant visas or statuses in the U.S. are typically considered temporary and legally require that the applicant for admission have the intent to leave at the end of their period of authorized stay; however, when one files an immigrant petition or application, he or she is typically disclosing an intent to stay permanently in the U.S. So, filing both types of requests with the U.S. government raises the issue of the applicant for admission's true intent to stay or leave, which can be a disqualifying factor for nonimmigrant visas and statuses.

If a prospective immigrant investor asks me about EB-5, I like to explore what relatives they may have in the U.S., and what kind of working activities they may be planning for the U.S. Such queries may lead to uncovering eligibility for other green card statuses that may not take as long as the EB-5 process, may not tie up so much money for such a long time as the EB-5 petition, and may permit the foreign national to spend or invest their hard-earned funds in a way that he or she can more fully control the return on investment.

The attorneys of Lippes Mathias can assist foreign nationals in determining the best path to a green card and can work with them to make that dream come true. We are an email phone call away — contact Eileen M. Martin at emartin@lippes.com or Elizabeth M. Klarin at eklarin@lippes.com.

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