

Details on EB-5, U.S. Permanent Residency/Greencard for Investors



The immigrant investor, or EB-5, program is a highly beneficial permanent residence option for the wealthy individual. Since there is no quota waiting list in this preference category, it enables a foreign national to obtain permanent residence status more expeditiously than with most other options. At Nwokocha & Operana Law Offices, we have helped wealthy individuals secure “greencard” or permanent residency status for themselves, spouses and children. It is one of the assured ways for immediate family members of successful individuals to relocate to the United States, go to school, etc., without needing to go to the U.S. embassy often for visitor’s visa. Once the necessary requirements are met, the individual and their family could apply for U.S. Citizenship and a U.S. passport.

This represents an excellent opportunity for foreign investors to secure permanent residency in the United States as well as invest in the largest economy in the world—the United States. We have helped investors from Nigeria secure their investment and permanent residency status in the United States for their families and them.

The EB-5 immigrant visa category was created for investors making significant investments in commercial enterprises that benefit the U.S. economy and create at least ten full-time jobs. Approximately 10,000 visas are reserved annually for EB-5 applicants. The EB-5 program was recently reformed by USCIS and the final rules took effect on November 21, 2019. See 84 FR 35750. To qualify under the EB-5 program, a foreign investor must invest at least \$1.8 million or \$900,000 if investing in a “targeted employment area” in a new commercial enterprise in the U.S. 8 C.F.R. §204.6 (f)(1). The required minimum investment amount was \$1 million or \$500,000 respectively for petitions filed before November 21, 2019. The investment must benefit the U.S. economy and create the requisite ten jobs. Permanent residence for EB-5 investors is granted conditionally for two years, at which time they need to file an application to remove the conditions, proving that their investment has continued to qualify

Although the investor’s role cannot be completely passive, he or she does not have to be involved in any way in the day-to-day management of the business unless he or she wants to do so. It is critically important that the investor be able to document the lawful source of investment funds, whether those funds are their own or given to him or her as a gift. The permanent residence obtained by the investor is conditional for two years, and can then be made permanent upon satisfying United States Citizenship and Immigration Services (USCIS) requirements that the investment proceeds have not been withdrawn and the requisite jobs have been created.

The investor may invest in his or her own commercial enterprise or in a commercial enterprise owned by other parties. The investor may also choose to invest in a pre-approved “regional center.” Regional centers are geographic areas that USCIS has determined investments will create the necessary 10 jobs per investor, whether directly or indirectly, in the area. Virtually all of the regional centers are in geographic areas where \$900,000 is the required amount of investment. Most of the regional centers involve limited partnership investments for which having the rights of a limited partner is considered sufficient to make the investor not completely passive.

Direct Investment v. Regional Center Investment.

The EB-5 program was originally created for foreign investors who make a direct investment – who personally make a qualifying investment in a new commercial enterprise, engage in the day-to-day management of the company, and create the requisite number of jobs required by regulations. A few years after developing the EB-5 category, Congress created a pilot program to encourage its utilization called the Investor Pilot Program, which set aside 3,000 EB-5 visas each year for those who invest in “designated regional centers”. A regional center is defined as an “economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment.” 8 C.F.R. §204.6 (e). The benefit to investors is that the pilot program does not require that they directly employ ten U.S. workers, as “indirect” job creation is sufficient. 8 C.F.R. §204.6(j)(4)(iii). Although efforts are underway to make this program permanent, it is still temporary and requires Congress’ periodic renewal.

New Commercial Enterprises

To qualify as “new”, businesses must be created after November 29, 1990, and must be “commercial” for-profit entities. 8 C.F.R. §204.6 (e). There are exceptions, however, when an investor restructures, reorganizes, or expands. Expanding an existing business requires that there be an increase of at least 40% in the net worth or the number of employees. A “troubled business” is one that has been in existence for at least two years and has incurred a net loss during the 12 to 24-month period before the petition was filed of at least 20 % of the business’ net worth before the loss. *Id.* A new enterprise established through the capital investment in a troubled business must prove that the number of existing employees will be maintained at no less than the pre-investment level for a period of at least two years.

Targeted Employment Areas

To qualify for the lower investment amount of \$900,000, (or \$500,000 prior to November 21, 2019,) the employment must be created in a targeted employment area. Therefore, the EB-5 investment must either be in a rural area (located outside any standard metropolitan statistical area or within any cities with a population of 20,000 or more) or in a high unemployment area (with an unemployment rate of at least 150 percent of the national average). *Id.* TEA determinations were historically made by each State’s authorities. Since November 21, 2019, however, this determination is now made by the USCIS at the time of I-526 adjudication. This is a dramatic change that is expected to lead to a substantial reduction in the number of EB-5 projects eligible for TEA designation.

At Nwokocha & Operana Law Offices, our EB-5 practice team counsels foreign nationals on the advantages and disadvantages of individual and regional center EB-5 petitions as compared with other immigration options. On individual EB-5 petitions, we work with corporate and tax counsel on structuring commercial enterprises that comply with the EB-5 regulations. In all cases, the team works with the foreign national on documenting the lawful source of investment funds, with the end result being the filing of an individual or regional center EB-5 petition with substantial documentation. Finally, the firm's EB-5 practice team also works with its foreign national clients on filing the application for permanent residency, the petition to remove conditions, and ultimately, where requested, an application for naturalization to U.S. citizen.

We are nationally renowned for providing immigration solutions to the most complex issues in immigration law to individual clients from around the world. The firm has many success stories to share. Call us for details.

Paschal Nwokocha has extensive experience in U.S. immigration law. He is the Co-Editor of the [Immigration Practice Deskbook](#), a great resource for Immigration attorneys. He has published articles in U.S. national outlets and has been quoted in prominent news media. Simply put, he is a trusted authority in U.S. Immigration matters. In 2008, he was elected chair of Minnesota/Dakotas Chapter of American Immigration Lawyers Association (AILA---www.aila.org), an organization of more than 11,000 immigration lawyers and professors in the United States. Before that, he served in different capacities in the organization as the Chapter Liaison with Immigration and Customs Enforcement (ICE) and the Office of Chief Counsel (OCC). He has also lectured lawyers on various aspects of U.S. immigration law. He recently authored an article for the William Mitchell Law Review, "American Employment Based Immigration in a Competitive Global Market Place: Need for Reform" Vol. 35, No. 1.¹ The article analyzed the United States employment-based immigration system in view of the evolving global economy.

He has represented investors, businesses and individuals in all aspects of United States immigration law.

Visit our website at www.paschal-law.com for additional information.

¹ WebLink to the Article is here: <http://www.paschal-law.com/news/index.php?entry=entry090303-172312>

U.S. Immigration Opportunities for Foreign Investors



Prior to the Immigration Act of 1990, a foreign national could not qualify for permanent immigration to the United States based upon an investment, no matter how large. Investors had to qualify, if at all, as employees of U.S. companies, family members of U.S. citizens or permanent residents or, in the alternative, obtain nonimmigrant (temporary) visas. As a result of this policy, many foreign investors immigrated to countries such as Canada and Australia, which have provided substantial incentives to foreign investors.

From 1990, foreign national investors could qualify for permanent residency status in the United States if they meet certain requirements. For most of the 1990s, nationals from Europe, Asia and the Middle East took advantage of this unique opportunity. Some use this primarily as a means of securing residency status for their spouses and children, who can live, work and study in the U.S. without the constant need of going to the U.S. embassy to apply for visas, and possibly risking a denial. These beneficiaries also have the option of applying for United States citizenship once the requirements are met.

Presently, 10,000 immigrant (permanent) visas per year are available to foreign investors and their family members who meet certain, very specific criteria. These criteria are interpreted very strictly by the U.S. Citizenship and Immigration Services (USCIS).

Few Africans have secured the visa through this route. At Nwokocha & Operana Law Offices, we believe in bringing this visa option within the reach of all, especially Africans. As a firm founded by Immigrants to the United States, we are uniquely positioned to offer this service to other potential immigrants.

Frequently Asked Questions and Answers of U.S. Investor Program



What is the minimum amount of investment required?

For investments in areas other than “targeted employment areas,” the minimum amount of investment is \$1.8 million. Investments in “targeted employment areas,” including approved regional centers, can qualify with a minimum of \$900,000.

What is a “targeted employment area?”

A targeted employment area is a rural area or a geographic area that has experienced unemployment at a rate of at least 150% of the national average rate. Individual states are authorized to designate geographic areas within the state that qualify as targeted employment areas. Of the 10,000 visas available for investors, 3,000 are reserved for investments in targeted employment areas.

What is included in calculating the investment amount?

The entire amount of the investment need not be in cash. Assets transferred to the U.S. investment can be included at fair market value. Debt can be included in the required minimum investment amount but only to the extent that the debt is secured by assets owned by the investor, and the investor is personally and primarily liable. The assets of the business in the United States in which the investment is made cannot be used to secure any of the indebtedness.

Must the entire amount of the investment be made at the time of applying for an immigrant visa?

The entire amount of the investment need not have been made at the time of applying for an immigrant visa. However, the investor must prove availability of the funds and an actual commitment of the required amount of capital. A mere intention to invest or plans for a future investment where there is no present commitment of the funds will not qualify.

Are there any restrictions on the types of businesses in which the investment must be made?

The investment must be in a “new commercial enterprise” in the United States. “New” means that the investment must have been made after November 29, 1990. “Commercial” is to be distinguished from a passive, speculative investment, such as a purchase of real estate for use as a personal residence or for potential appreciation in value (as opposed to an active real estate development project).

The U.S. investment can be in any one of four forms: (1) the creation of a new business; (2) the purchase of an existing business, which is reorganized to form a new enterprise; (3) the expansion of an existing business; or (4) the saving of a failing business.

Are there any specific rules regarding an investment in an existing business that enables the existing business to expand?

The investment must result in a 40% increase either in the net worth or the number of employees of the business. For example, if a business has a \$5 million net worth and employs 50 people, the investment would qualify either if it increases net worth by \$2 million or if it results in an expansion of 20 employees.

Must the investor have any specific relationship with the U.S. business in which the investment is made?

The investor need not own any specific percentage of the business, be an officer of the business or be an employee of the business. However, the investor must be engaged in some way in the business, whether through actual day-to-day managerial control, by being a member of the board of directors, by being a limited partner, or the like.

Must the investment result in the creation of employment for U.S. workers?

The investment must create full-time employment for at least 10 U.S. citizens or immigrants (permanent resident aliens and other specified immigrant categories). The required 10 positions cannot include the investor or the investor’s spouse or children. The 10 jobs must be for employees of the enterprise in which the investment is made and cannot include independent contractors. However, for approved regional centers, the creation of employment is pre-approved and can include indirect employment.

When must the employment be created?

The required 10 jobs must be created within the two- year period immediately following the investor becoming a permanent resident.

May an investor qualify based upon an investment in a failing business where the investment results in saving the business and saving the jobs of the business's employees?

An investment in a "troubled business" may qualify without a requirement of showing the addition of new jobs to the business. In order to qualify, the business must have been in existence for at least two years and must have suffered a loss of at least 20% of its net worth during the past two years. The number of existing employees of the troubled business must at least remain the same for a period of two years.

May two or more investors qualify for immigration based upon a pooled investment in a single business?

There is no limit to the number of investors who may qualify for immigration based upon an investment in a single business. However, each investor must invest the required minimum amount, and the number of jobs created must be equal to ten times the number of qualifying investors. For example, if five investors each invest \$1 million in a business, they can each qualify for immigration if 50 jobs are created in the business.

Is the immigration status granted to the investor valid indefinitely?

The permanent resident status initially granted to the investor is actually a "conditional permanent resident status" that is valid for a period of up to two years. The investor and family members are required to remove the condition by filing an application during the 90 day period preceding the second anniversary of obtaining this status. The petition will be required to demonstrate the establishment of the business, the investment of the requisite amount of capital and the creation of the required number of jobs. Once the requirements are met, "conditions" are removed and the status is valid indefinitely.

Is the Investor required to be in the United States through out the petitioning process?

The petition could be initiated and completed while the investor is living outside the United States. Upon approval of the Form I-526, the investor has the option of going to the U.S. embassy for the permanent residency visa. For an investor who elects to apply for permanent residency status while present in the United States, the person can travel in and out of the country on a government approved travel document (no need for visa) while the petition is being processed.

Is the investor free to travel after obtaining conditional permanent resident status?

The investor is free to travel in and out of the United States subject to the rules generally applicable to permanent residents. Specifically, the investor must actually have a residence in the United States and must not be outside the United States for a continuous period of one year or more.

What is the procedure for an investor to qualify as an immigrant based upon the investment?

Form I-526, “Immigrant Petition by Alien Entrepreneur,” must be filed with USCIS. The petition must be supported by a substantial amount of documentation proving that the investor meets all of the requirements. Once the petition is approved, the investor may either apply for an immigrant visa at a U.S. Consul or, if the investor is in the United States, apply for adjustment of status to permanent residence.

What documents must be filed with the petition?

The basic rule is that there must be documentation to establish each of the requirements set forth above. Specifically, documentation must prove the actual transfer or commitment of funds; the lawful source of the investor’s funds; the location of the investment in a targeted employment area (if the investment is less than \$1.8 million); the establishment of the new commercial enterprise; the involvement of the investor; the business; and the actual creation of 10 full-time positions or a comprehensive business plan showing the need for the 10 employees and the approximate dates when they will be hired. Specific additional documents will be required depending upon the details of the investor and the investment being made.

What documentation must be presented to prove that the investor’s funds came from a lawful source?

Generally, the investor will present some combination of individual and/or business tax returns, employment records, documentation regarding sale of a business, documentation regarding gifts or inheritance, and documentation regarding securities or real estate transactions.

What is a regional center?

USCIS has approved a number of regional centers. If an investor invests in one of these approved regional centers, the \$900,000 investment amount will be sufficient. In addition, the investor will not need to prove the creation of jobs for 10 U.S. workers.

How can I obtain information on approved regional centers?

Please contact us. We will be able to send up to date information on all approved regional centers or on regional centers with the longest and best history of immigration approvals. We will evaluate each center, and depending on investor’s interests and industry, we can make recommendations.

What other services does the Law Office offer to Immigrant Investors?

We have developed a network of professionals to advise our clients on various matters, with our office serving as lead counsel. Among the services we offer include setting up businesses in the United States, including subsidiaries and affiliates; advising and helping clients send employees from overseas to help manage and lead the U.S. subsidiary; identifying tax, accounting and related business professionals to assist in all aspects of the business.

Contact us for more information.



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