

# EB-5 USA Green Card Visa



Immigrate to USA



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## About ABHINAV

***We are the change makers in people's lives where it matters the most. Bridging geographical barriers and connecting worlds is our motto. We believe in helping you and your family to live a good quality life. So, as global immigration and visa specialists, we play an important role in helping people select their new settlement destination.***

Established in 1994, ABHINAV is an Immigration and Visa Consultancy Company catering to possible immigration needs of its clients. We have a network of offices with experienced staff and seasoned international associates including professionals, lawyers and authorized representatives for major immigration destinations. We are ideally positioned to assist our clients in choosing the right immigration destination and handholding them through the entire immigration process. Our understanding of concurrent immigration rules and procedures and learning through past precedents in managing various immigration and visa situations ensures proper presentation of application forms and the overall credentials of our clients.

ABHINAV caters to those seeking living and work options to all major countries such as Canada (Federal and Quebec), Australia, UK, Denmark, Singapore, Hong Kong and other popular destinations. Our USP is our transparency with clients at all stages of application process.

Our services include all forms of immigration and visa applications such as Permanent Resident and Skilled Migrant visas, Investor and Business immigration applications, Temporary Work Permits and so on. Filing pleas and appeals against rejected and refused applications is our forte.

Ajay Sharma is the Founder at ABHINAV. In his vast industry experience, he has worked with an array of clients from both India and abroad and continues to gain respect for his solution-oriented approach to complicated immigration and visa issues. His blog at [www.abhinav.com](http://www.abhinav.com) on immigration and visa matters is among the most read across the nations.

With our solution – based approach, all we need is our clients to think beyond limits so that we can put our best foot forward. This provides us the challenge to perform better and exploit our expertise making each of our cases, a big success.

***So, let experience stand by your side in this life-changing decision called Immigration!***

## EB-5 USA Green Card Visa

EB-5 USA Green Card Visa is an excellent American Permanent Residency (PR) opportunity for individuals with a qualifying net worth, and also their dependent families. It permits the applicant to immigrate to the nation through US Green Card with dependent spouse and children below 21 years.

The overall application processing time for the EB-5 Visa to the US is around one year. The visa is called EB-5 Visa as it is an employment based preference immigration category that requires the applicant to be involved with a new commercial enterprise in the US which benefits the American economy, by creating or supporting at least 10 full time – direct or indirect - jobs.

While the applicant may not be involved in day-to-day operations of the invested commercial enterprise, he must have at least a policy level role. If the person is investing in an existing commercial enterprise that business must have been established after November 29, 1990.

Normally, an annual quota of 10,000 visas is identified under the EB-5 Visa category every year. Under a pilot program, at least 3000 of this quota have been set aside for designated regional centers for the EB-5 Visa.

Post approval of the EB-5 application, a conditional Green Card is issued to the applicant (and spouse and dependent children) for a period of two years. After 21 months of holding the conditional EB-5 Green Card, the applicant applies for removal of condition by providing evidence that the investment lead to creation of 10 US jobs during the conditional status. Once proven, the condition is removed and the applicant (and spouse and dependent children) get Permanent Green Card. He can apply for US citizenship after 5 years.

## Qualifying Immigrants under USA EB-5 Immigration Visa

The applicant must invest at least USD 10, 00,000 or at least USD 500,000 in a new commercial enterprise, if investing in a “Target employment area”.

The new commercial enterprise may have multiple owners, including those not applying for the EB-5 Visa, if:

- a) The source(s) of all capital is identified and,
- b) All invested capital source of funds, if derived through lawful means.

This requirement being the key to acceptance of the EB-5 investor visa application, check whether you meet the definitions related to source of funds and lawful means for your EB-5 Visa application by writing to

[web@abhinav.com](mailto:web@abhinav.com) .

## EB-5 USA Green Card Visa – Stage-wise Application Process

- Abhinav provides pre-screening assessment form and reviews the information provided by you, prospective EB-5 applicant.
- Abhinav confirms whether or not you meet the qualifying criteria for EB-5 green card.
- If qualified, Abhinav offers possible designated regional centers options that you could review and analyze for possible investment vehicle.
- Once you have chosen the EB-5 regional center in which you wish to invest, you will sign an engagement agreement with Abhinav and pay the initial retainer visa consulting fee of ABHINAV.
- Post signing of engagement agreement, Abhinav will provide confidential offering memorandum that will describe the chosen regional center project.
- You sign the subscription agreement as an investor and pay the administrative fee into the Escrow account. The administrative fee differs from project to project basis but normally ranges between USD 40,000 to USD 75,000. Please note that application of investment funds (USD 500,000 or 10, 00,000) is done in the development of the regional center, while the administrative fee is charged by the EB-5 Regional Center. The administrative fee is charged to meet expenses related to marketing and promotion of the project. This fee is refunded if the I-526 application is refused.
- In addition to the investment funds and administrative fee, the EB-5 investor must also budget for attorney fee of USD 15000 to USD 20,000 for managing both I-526 and I-829 stages of EB-5 visa. The investor applicant must also budget for USCIS (United States Citizenship and Immigration Service) application fee for I-526 petition and I-829 petition. The attorney and application fee is non-refundable.
- Thus, in addition to investment funds, the EB-5 investor applicant must keep an expense of around USD 65,000-80,000 towards administrative fee, attorney fee and application fee at various stages. Except for USCIS application fee(s), the other two costs are variable and may differ amongst different designated regional centers.
- You deposit the USD 500,000/10, 00,000 into the Bank Escrow account. An escrow account an agreement made under contractual terms and conditions between the transacting parties, under which an independent reliable third party gets and gives out money and/or documents for the involved parties, even as the timing of such payouts by the third party is based on the execution of contractually-agreed terms and conditions by the involved parties. A regional center cannot transfer the investor funds into the Limited Partnership's account until the I-526 petition is approved. This is because the EB-5 prohibits the use of money for regional center project because under the EB-5 law, the investor's money cannot be used unless it has been proved that it is from lawful source. Approval of I-526 accepts the assertion of the investor that he has invested from lawful source/. It also protects the investor interests since approval of I-526 will lead to issuance of his conditional green card under EB-5 visa.

- All this while Abhinav is coordinating with you and guiding you on areas and documents related to I-526 petition. Once the investment has been deposited, the case attorney will file your I-526 petition with California service center of the USCIS.
- USCIS takes 3-6 months to take decision on the I-526 petition. Please note that the application processing time frames are always subject to change without notice.
- If I-526 is approved, then the deposit of 500,000/10, 00,000 is released to regional center partnership account. If it is refused / disapproved, the deposit of 500,000/10, 00,000 is returned to your (investors) account.
- You, the investor, file an application for Immigrant Visa or adjustment of Status. Normally, if outside India, this application will be filed at the nearest US Embassy. Post filing of the application at US Embassy, additional processing time 2-6 months is likely.
- You will be interviewed at US Embassy and post approval, issued EB-5 conditional Green Card.
- You land in USA on EB-5 Conditional Green Card.
- 21 months from date of admission into USA on Conditional Green Card, investor submits the EB-5 I-829 petition to USCIS for change of status to Unconditional permanent Green Card. Decision on removing conditions is normally taken within 6 months of submission of I-829 petition and conditions removed. If application for I-829 is accepted, then permanent Green Card is dispatched to the address of the applicant.
- If I-829 petition is denied, the applicant files an appeal.

# EB-5 USA Green Card Visa -- Key Features, Qualifying Criteria

While following act as a guide towards qualifying criteria for the EB-5 Visa application, the applicable features and criteria may differ from case to case basis. Write to [ajay@abhinav.com](mailto:ajay@abhinav.com) to check whether you qualify the selection criteria for making an EB-5 US Green Card Visa application.

- The applicant must meet definition of an accredited investor. An Accredited Investor means the investor: (i) has a net worth (or joint net worth with the Subscriber's spouse) of at least \$1 million; or (ii) had an annual gross income in each of the last two years of at least \$200,000, and has expected gross income in the current year of at least \$200,000; or (iii) otherwise meets the requirements for an Accredited Investor as defined in the regulations.
- The enterprise/business in which the applicant is investing must have been formed after November 29, 1990. The EB-5 investment in businesses established before this date can also be considered, provided the investment by the applicant for the EB-5 Green Card 'expands' or "restructures" the existing business.
- The degree of "restructuring" or "reorganization" that will qualify under the EB-5 is not defined and key determinant will be whether or not 10 new jobs have been created.
- As regards the "expansion" of commercial enterprise, only an expansion resulting in an increase of at least 40% in business net worth, or in the number of business employees could be a considered a qualifying EB-5 definition. This may mean that a qualifying EB-5 investor expanding the business may be required to employ more than 10 employees, if pre-expansion number of employees was more than 25.
- All above complications can normally be avoided if the investor chooses a designated regional center as a route to make the application under the EB-5 Visa category. It centers responsibility to get the project pre-approved as regards definitions of commercial enterprise and also ensure that the requirement of at least 10 new jobs – against the applicants' visa is met. He can do so by making an investment in a designated regional centre having an approved project in a target employment area (TEA).
- The business/enterprise must be for-profit and be at risk. It excludes non-commercial activity, like owning and running a personal residence or non-for profit business. The form of ownership may include sole proprietorships, partnerships (Limited or General), holding companies, joint ventures, corporations, business trusts, or any other form of permitted business entity that is publically or privately owned.
- Eb-5 investors only need to show that they have invested in a commercial enterprise and do not need to prove that they have established it.
- The commercial enterprise can identify overall number of direct and indirect jobs that will be created and then divide them in the pool of EB-5 investor applicants. However, each investor much identify, individually, the source of the invested funds and also that they have been acquired legitimately.
- The applicant must be involved in management of the commercial enterprise, through policy formulation.

- Usually, the capital should be fully invested (contributed) and at risk in the commercial enterprise at the time when I-526 petition is filed. The capital contribution is defined as cash or cash equivalents, equipment, inventory or other tangible property. A signed promissory note that is secured by applicant's personal assets constitutes capital contribution. All capital is valued as per fair market value of USD at the time of deposit.
- The commercial enterprise must contribute to the American economy. Normally, this would mean that enterprise must be in legitimate business and meet regulatory requirements related to foreign investments.
- The commercial enterprise must employ 10 full time employee minimum – not counting investor applicant, spouse or their children and non-immigrants – and these employees must be US citizens or permanent residents or others who are lawfully permitted to work in the US. Full time requires a minimum of 35 hours per week. Two or more employees can share one full time position. The business plan should indicate the approximate dates around which – during the conditional visa issuance period – the jobs will be created.
- The EB-5 project may include investment in a troubled US business. Such a business would normally be in existence for at least 2 years, would have incurred a net loss during 12 or 24 month period before the I-526 petition is filed, even as the loss should at least be 20% of the businesses net worth, before the loss. The business should continue during the conditional status period and maintain the number of jobs that the business employed during the pre-investment period.
- The commercial enterprise may be located in a targeted employment area (TEA) and thereby qualify to accept investment of USD 500,000. The targeted employment area is notified by states and is by definition a rural area or area that has experienced high unemployment rate of at least 150% of the national average. Usually, the designated regional center will provide, to the investor, certification from the state confirming the area to be the TEA.

# EB-5 USA Green Card Visa Procedures –I-526 Petition Documents

The first stage for an EB-5 process is filing an application to California service center of the United States Citizenship and Immigration Services (USCIS) using the Form I-526. The application has to be signed by the applicant. I-526 petition must normally be accompanied by key documents. While following act as a guide, the precise documents to accompany I-526 application will differ from case to case basis. Write to [ajay@abhinav.com](mailto:ajay@abhinav.com) to understand the precise documents that may be applicable and appropriate to your EB-5 US Green Card Visa application.

- In relation to the EB-5 commercial enterprise the organizational documents of said business including but not limited to
  - a) Partnership agreements;
  - b) Incorporation documents;
  - c) Certificated supporting mergers and acquisition;
  - d) Business registration and licensing, etc.
- Where EB-5 investments are done in an existing business incorporated after November 30, 1990, proof that the mentioned capital was transferred after this date, and capital infusion led to increased net worth or increased employee number by at least 40%.
- The EB- 5 investment must have actually been done and to support this, the applicant will show one or more of following documents, including but not limited to:
  - a) Enterprise’s US bank account statement reflecting deposits by the investor;
  - b) Assets purchased for use by enterprise;
  - c) Documents supporting funds investment in exchange of stock; and
  - d) Documents supporting debts secured by applicant’s assets.
- Towards proving that EB-5 funds invested have been acquired using lawful means, the applicant can show it using documents such as:
  - a) Business registration documents;
  - b) Business and personal tax returns – filed anywhere across the world – during the last 5 years;
  - c) Documents supporting judgments, actions and proceedings (criminal and civil) against the investor applicable during last 15 years (if applicable);
  - d) Documents reflecting other sources of receipts, income, earnings leading to advised capital (used for EB-5 investment) investment; and
  - e) If business and personal tax returns are not available for last 5 years but if the applicant can still prove lawful source of funds and transfers, the appropriated reasons for such a situation should be provided.

- Money earned or asset created while being on an unlawful status of any country is not considered lawful.
- Earned income, used in creating investment supporting assets, supported by tax returns is most effective way of proving legitimate source of funds.
- At times, the income earned is tax-free and that is acceptable, so long as it is backed by filed tax returns and document which confirmed that income was tax-free as also bank receipts reflecting money inflow into the applicants account. While the indicated requirements – for tax returns – are for 5 years, it helps the application to provide tax returns that go back in time.
- Where money or asset is gifted, the onus on proving lawful means lies with the donor gift and in addition, the donor and / or investor must pay the taxes due against the gift.
- Where money/assets might have been inherited and in such an instance, the EB-5 applicant is required to prove the legitimacy of funds initially used to acquire property/assets/money savings. The overall objective is that it should be possible to trace funds at all stages – acquisition, disposition and transfer.
- The EB-5 I-526 petition will provide enough evidence as regards the creation of employment by applicant investment in the EB-5 project/center. The records can relate to actual employment that EB-5 commercial enterprise is already generating for 10 qualifying employees, including pay-rolls, paid taxes, etc. Where the EB-5 commercial enterprise is still to become operational, the I-526 petition should be accompanied by a comprehensive business plan that provides information on expected manpower needs, job descriptions, and hiring time-table.
- The EB-5 I-526 petition should clearly mention the managerial role that will be played by the investor – either through day to day involvement in running business, or by participating in policy formulation.
- The EB-5 I-526 petition must address – as applicable – issues related to designation of the high unemployment area and/or targeted employment area. These matters are normally addressed by the designated regional center/case attorney while filing the EB-5 visa petition for conditional approval.
- Designated regional center can be any economic unit – public or private – which is involved in promotion of economic growth in the US, through any or some or all of following:
  - a) Increased export sales;
  - b) Improved regional productivity;
  - c) Job creation; and
  - d) Increased domestic investment.

All proposals for seeking approval as designated regional centers are filed at California service center of the USCIS. All claimed details on promotional aspects of the commercial enterprise that will get the mentioned EB-5 investment must be verifiable. Normally, the EB-5 designated regional center project applications are approved, if they are convincing on the following areas:

- a) The commercial enterprise is such that it will received capital from the investors;
- b) The commercial enterprise will create 10 direct or indirect jobs;
- c) The investment in the commercial enterprise will lead to overall economic development.

The designated regional centers are regularly monitored as regards compliance on issues related to I-526 applications and I-829 condition removal applications.

If wishing to file the EB-5 application, through a designated EB-5 regional center, the EB-5 applicant must check to ensure that the said regional centre has been approved. It is advisable to make EB-5 visa application through approved regional center as they look after key responsibility areas of creation and/or maintenance of 10 direct or indirect jobs as envisaged by the EB-5 policy.

ABHINAV will be pleased to offer advice on some of the regional centers likely to be dedicated to the EB-5 visa program and commitment towards meeting the job creation and maintenance requirement. Look at the bouquet of the advised regional projects, do scrutiny at your end, and decide which could be the best pathway to your dream of being a US Green Card holder under the EB-5 Investor Visa Program.

Write to [web@abhinav.com](mailto:web@abhinav.com) to get a better and clearer understanding of the approved designated regional centers.

## EB-5 USA Green Card Visa Procedures – Removing Conditions with I-829 Petition

Approval of an EB-5 investor's I-526 petition leads entitles the applicant to a conditional two year resident visa for the US. The holder of the conditional EB-5 Green Card must make an application through Form I-829, within the 90-day period immediately preceding the second anniversary of the applicant's admission into the US on the conditional EB-5 Green Card Visa. Should the applicant fail to do so, his/her conditional Green Card status will stand cancelled, and the removal process initiated.

The EB-5 I-829 Form is used to file for removal of conditions, with California service center of the USCIS. I-829 petition should ideally be accompanied by all relevant information including, but not limited to, following:

- a) The EB-5 investor met the capital investment requirement.
- b) The EB-5 investor continuously maintained the levels of capital investment.
- c) The investor's investment created 10 full time jobs and to support that the I-829 must be accompanied by relevant pay-records, relevant taxation documents and form I-9 records.

The service center is within its right to take either of the following actions on I-829 petition:

- a) Approve the petition;
- b) Request for further evidence (RFE): This can be done by asking for additional documentation or responses in writing; the RFE queries normally seek clarification on proper number of jobs creation within a defined, clear and credible period of time and confirmation of committed capital investment.
- c) Where an RFE is issued, the center director should either approve the I-829 petition or refer for adjudication to a district office. The service director will normally refer to the district office if he is not convinced with offered responses and/or feels that an interview is required.
- d) The district office will either approve or deny the I-829 petition; if denied, there is no appeal from such a decision and at best, the holder can request review of decision during removal proceedings.
- e) During the pendency of the I-829 petition, the conditional EB-5 status of the visa holders stays valid and it is extended automatically in increments of one year till such time that the USCIS acts on their pending application.

If the I-526 petition was made through a designated EB-5 regional centre, then it is best to take their services in preparation and filing of the I-829 petition. Should the condition be removed, the USCIS service center will remove the conditions on the second anniversary of the applicants' admission and issue the new permanent resident green card directly to the visa holder.

ABHINAV works with the best of the American lawyers and approved designated regional centers, overall objective being approval of both I-526 and I-829 petitions. Write TODAY to [web@abhinav.com](mailto:web@abhinav.com) to know the right way to invest under the EB-5 Visa and get approval at both the crucial petition stages.

## **EB-5 USA Green Card Visa Procedures – Termination of EB-5 Visa Status**

There can be 3 key grounds of refusal of the EB-5 status during the two year conditional period:

1. Where it is proved that the investment under the EB-5 Visa was made with the intention of evading the US immigration laws;
2. Where the commitment capital investment was not made, or the capital investment was not sustained during the 2 year conditional period; and
3. Where the investment did not confirm to the requirements of employment creation provisions.

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