



EB-5 Immigrant Investor Program Frequently Asked Questions
(08/2017)

1. EB-5 Visas Issued to the Top 5 Countries for FY-2015 to FY-2017:

<u>FY-2017*</u>	C5	T5	I5	R5	Total
China – Mainland born	165	256	6,278	11	6,710
Vietnam	1	24	328	0	353
Brazil	0	5	215	0	220
South Korea	11	2	144	0	157
India	4	24	114	0	142
Total All Countries	249	377	8,010	11	8,647

* October 01, 2016 through July 2017 (preliminary data)

<u>FY-2016*</u>	C5	T5	I5	R5	Total
China – Mainland born	143	367	6,997	9	7,516
Vietnam	9	5	320	0	334
South Korea	10	16	234	0	260
China – Taiwan born	7	10	186	0	203
Brazil	8	14	128	0	150
Total All Countries	273	573	9,088	13	9,947

*October 01, 2015 – September 30, 2016

<u>FY-2015*</u>	C5	T5	I5	R5	Total
China – Mainland born	38	61	8,049	9	8,157
Vietnam	4	4	272	0	280
China – Taiwan born	0	1	138	0	139
South Korea	1	1	114	0	116
India	3	6	102	0	111
Total All Countries	64	92	9,597	11	9,764

*October 01, 2014 – September 30, 2015

2. USCIS's statistics for I-526 and I-829 approvals and denials for FY-2015 and FY-2016.

<u>FY-2015(10/01/14-09/30/15)</u>	Filings	Approvals	Denials
Form I-526	14,373	8,761	1,056
Form I-829	2,767	1,067	11

<u>FY-2016(10/01/13-09/30/14)</u>	Filings	Approvals	Denials
Form I-526	14,147	7,632	1,735
Form I-829	3,474	1,758	102



3. EB-5 investor visas issued for FY-2005 to FY-2016:

Category	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
*C5	132	194	149	149	282	324	230	159	243	161	64	273
*T5	216	512	470	239	410	239	152	164	227	155	92	573
*I5	1	96	173	1,055	3,519	1,321	3,076	7,312	8,087	10,375	9,597	9,088
*R5	-	0	1	-	7	1	5	5	7	1	11	13
Total	349	802	793	1,443	4,218	1,885	3,463	7,641	8,564	10,692	9,764	9,947

*C5 Non-regional center \$1 million investment

*T5 Non-regional center \$500,000 investments

*I5 Regional Center \$500,000 investments

*R5 Regional Center \$1 million investment

4. What is the EB-5 Immigrant Investor Program?

Under Section 203(b)(5) of the Immigration and Nationality Act (INA), 10,000 immigrant visas per year are available to qualified individuals seeking to obtain permanent residence in the U.S. on the basis of their investment in a U.S. business. Permanent resident status under the EB-5 category is available to investors, either alone or coming with their spouse and unmarried children under the age of twenty-one (21).

If an investor's EB-5 petition is approved, the investor and dependents may apply for two-year conditional resident status. During the conditional period, the investor must continue to satisfy all EB-5 requirements in order to qualify for a removal of conditions. Permanent resident status is granted to the investor and dependents only if the petition to remove conditions is approved.

5. What is the cost for obtaining permanent residency through the EB-5 immigrant investor program?

The investing capital for EB-5 program is \$1 million, or \$500,000 if on the day of the investment, the investing area is a Targeted Employment Area. In addition, there are attorney's fees, costs, and filing fees paid to US Citizenship & Immigration Services.

6. What are the qualifying criteria?

- 1) Invest or be actively in the process of investing in a **new commercial enterprise**—meaning a for-profit U.S business established after November 29, 1990. The business may take various forms such as a corporation, sole proprietorship, or limited partnership. A business established before November 29, 1990 may still qualify as a “new commercial enterprise” for EB5 purposes if, since the date it was created, it (1) has been expanded so that a 40% increase in the net worth or number of employees has occurred, or (2) has been significantly restructured or reorganized.



- 2) Invest or be actively in the process of investing the **requisite capital** of at least **US\$1,000,000** **OR US\$500,000**. The lesser investment requirement of US\$500,000 applies only where the investment is being made in a "targeted employment area," which is an area that has experienced unemployment of at least 150% of the national average rate or a rural area as designated by Office of Management and Budget.
- 3) Make an investment that will benefit the U.S. economy and **create full-time employment for at least ten (10) U.S. citizens or authorized immigrant workers**. Where the capital investment is being made in a "troubled business," which is a business that has been in existence for at least two years and that has lost 20% of its net worth over the past 12 to 24 months, the number of existing employees must be maintained at no less than the pre-investment level for a period of at least two years.

In addition, the investor must show that the source of investment funds is lawful and the investor intends to maintain more than a passive role in the management of the new commercial enterprise.

7. When is the investing capital \$500,000 and not \$1 million?

If on the day of investment, the city which the alien investor is investing in is a Targeted Employment Area ("TEA"), the investment amount will be \$500,000; if not, then \$1 million investment is required. For an area to qualify as a TEA, the unemployment rate of that area on the day of investment needs to be 1.5 times of the national average unemployment rate, or it must be considered a rural area, which is an area outside of a Metropolitan Statistical Area or an area outside of a city or town having a population of 20,000 or more.

According to section 204(b)(5)(ii) of the Immigration and Nationality Act (INA) and Title 8 Code of Federal Regulations (8 CFR) section 204.6(e), "targeted employment area" eligibility is determined at the time of the investor's investment into the new commercial enterprise before the I-526 is filed, and is not required to be proven again at the time the I-829 is filed.

8. Is business experience required for petitioners?

Petitioners do not need to have any business experience.

9. What is the procedure and processing time?

To obtain immigrant investor status: The alien investor must submit a completed Form I-526 (Immigrant Petition by Alien Entrepreneur) to USCIS along with supporting documentation clearly demonstrating that the investment meets all EB-5 requirements.

To obtain conditional resident status (only after the I-526 is approved): If residing within the U.S., the alien investor must submit a completed Form I-485 (Application to Register Permanent Residence or Adjust Status) to USCIS. If residing outside the U.S., the alien investor must apply for an immigrant visa at a U.S. Consulate abroad.



To become a lawful permanent resident: The alien investor must submit a completed Form I-829 (Petition by Entrepreneur to Remove Conditions) to USCIS, within 90 days before the second anniversary of admission to the U.S. as a conditional resident.

10. What documents/materials are needed for the submission of an I-526 investor petition?

- 1) Petitioner's source of funds analysis report;
- 2) Company's business license, including business documents of shares distribution;
- 3) Company's asset audit report(to be prepared by accounting firms);
- 4) Chinese company registration documents;
- 5) Chinese company organizational structure chart (to show investor's title and position in the company);
- 6) Chinese company's financial statements (for the past three years)
- 7) Petitioner and his/her spouse's real estate ownership certificate;
- 8) Petitioner and his/her spouse's personal bank account statements(to prove there is sufficient investing capital);
- 9) Resume;
- 10) Copy of passports of investor and dependents (including spouse and unmarried children under the age of 21);
- 11) Notarized Birth Certificates of investor and dependents (including spouse and unmarried children under the age of 21);
- 12) Notarized Police Certificate or official document showing that investor and dependents (including spouse and unmarried children under the age of 21)do not have any criminal records;
- 13) Notarized Marriage Certificate of investor and his/her spouse; and
- 14) Any other documents that can show investor's annual income and assets.

Please note, since each investor's situation is different, the required documents for source of funds will be different, and need to be finalized with an immigration attorney.

11. How can I prove my investment funds were obtained legally?

Proof of source of funds can be investor's personal bank statements, income statements, tax returns, real estate contracts, court records, or any other similar documents.

12. What if neither I nor my company has any tax record or financial statements?

Any record/documents provided by retained Certified Public Account, attorneys, or court, or similar documents can also be used in the source of funds analysis report.

13. Where should my investing capital be upon the submission of the I-526 investor petition? If it is a regular EB-5 investment, your investing capital should be in the bank account of your new commercial enterprise. If it is an EB-5 regional center project investment, the investing capital should be in the project's escrow account.



14. What is the next step if my I-526 investor petition is approved?

If you are in the U.S., you can submit an I-485 Adjustment of Status, and upon its approval, you will obtain a two-year conditional permanent resident status. If you are outside of the U.S., you should apply for an immigrant visa in your home country.

15. If I am in the U.S. on a B-2 visitor visa, when can I file my I-485 to adjust my status?

Under the Department of State's 30/60 day rules in regard to intent (per Foreign Affairs Manual 9 FAM40.63), a person who applies for a change of status (including I-485 adjustment of status) within 30 days of entering the U.S. is presumed to have preconceived intent. If between 30 and 60 days, the presumption would become a rebuttable presumption, and if after 60 days, there would be no presumption of preconceived intent. USCIS often relies on the 30/60 rule as a guideline in making its own determinations with respect whether the petitioner and/or dependents have committed entry fraud, as a matter of discretion, in change or adjustment of application adjudications.

16. If I am in the U.S. on a F-1 student visa, when can I file my I-485 to adjust my status?

Under the Department of State's 30/60 day rules in regard to intent (per Foreign Affairs Manual 9 FAM40.63), a person who applies for a change of status (including I-485 adjustment of status) within 30 days of entering the U.S. is presumed to have preconceived intent. If between 30 and 60 days, the presumption would become a rebuttable presumption, and if after 60 days, there would be no presumption of preconceived intent. USCIS often relies on the 30/60 rule as a guideline in making its own determinations with respect whether the petitioner and/or dependents have committed entry fraud, as a matter of discretion, in change or adjustment of application adjudications.

17. How do I include my dependent(s) after my I-526 petition is approved by USCIS?

After your I-526 Petition is approved by USCIS, you can add names of qualified dependents as derivative beneficiaries of your immigrant petition. To register the new derivative family member(s), you should advise National Visa Center of the addition(s) before the petition is transferred to the US consulate or embassy that handles the immigrant visa interview. The proper documents establishing family relationship should be submitted to National Visa Center. In the event the immigrant petition file of the principal investor is transferred to the U.S. consulate, written notification must be made immediately to the U.S. consulate before the immigrant visa interview of the principal investor.

18. What if I or my family resides in a third country?

The procedure and processing time frame are the same regardless of where the petitioner resides. However, the petitioner must provide a certified police certificate of any country where he or she has resided for more than 6 months.



19. If I or any of my family dependents have a U.S. nonimmigrant status, and the immigrant investor petition is denied, what would happen to the nonimmigrant status?

Since U.S. has different types of nonimmigrant status, and each of them has its own immigration regulation, an attorney cannot advise a particular result without knowing the specifics of each case.

20. After obtaining the conditional permanent residency, must I live in the U.S.?

After you have obtained your conditional permanent residency status, you can travel freely in and out of the U.S. However, you cannot stay abroad for more than 6 months at a time, and you will also need to show by action the intent to make the U.S. your permanent home.

However, if you plan to become a U.S. naturalized citizen, you must accumulate two and a half (2.5) years U.S. residency during the five (5) years preceding your naturalization application.

21. What are the difficulties frequently encountered in EB-5 immigrant investor cases?

The frequently encountered difficulties are source of funds documentation proving the investing capital was legally obtained, and the operation of the investing business, together with the fulfillment of the EB-5 immigrant investor program's requirements during the two-year conditional permanent residency.

22. What kind of return will I get after investing in a Regional Center project?

Investment returns varies with different EB-5 regional center projects.

23. When can I apply for permanent resident status?

The alien investor must submit a completed Form I-829 (Petition by Entrepreneur to Remove Conditions) to USCIS, within 90 days before the second anniversary of admission to the U.S. as a conditional resident, with supporting documentation showing that investment has created requisite jobs.

24. What requirements do I need to satisfy in order to successfully remove my conditions?

The investment was made and has been well maintained continuously for two (2) years, and ten (10) full-time positions were created. However, please also understand that an immigration attorney cannot guarantee a particular outcome or the time a case may take to complete, since the legal adjudication is undertaken by USCIS. Every case is a case-by-case scenario.

25. If I cannot satisfy the requirements during my two-year conditional permanent residency, what will happen to my status?

USCIS will not approve the I-829 Petition by Entrepreneur to Remove Conditions.



26. If USCIS denies my I-829 petition, what will happen to my status?

You are not able to obtain permanent residency, and cannot stay in the U.S.

27. After receiving permanent residency, when can I apply for U.S. Citizenship?

After receiving permanent residency status, you can apply for U.S. Citizenship in three (3) years since you have already had a two-year conditional permanent resident status.

28. When do I need to start paying taxes?

You need to start paying taxes upon obtaining the two-year conditional permanent resident status. The filing of tax return is in the month of April every year. Please consult with your CPA for further information.

29. What is selective service?

Please check with Selective Service System at <http://www.sss.gov/> regarding the responsibility to register for Selective Service if you or any of your dependents is a male between the ages of eighteen (18) and twenty-six (26).

30. If my family and I obtained conditional permanent resident status, can my children attend public schools, including elementary school, junior high school, high school, and colleges/universities, and enjoy the tuition benefits (for colleges/universities) given to the residents who reside in that state?

Yes. After you and your family obtain conditional permanent resident status, your children can attend public schools, and enjoy the same tuition benefits (for colleges/universities) given to the residents of that state. However, generally public colleges/universities require their prospective students to reside in that state for at least one (1) year before they are eligible for tuition benefits.

31. Are there any diseases which may bar admission to the United States as an immigrant?

Yes. Communicable diseases of public health significance may be grounds for inadmissibility. Such diseases include, but are not limited to, chancroid, gonorrhea, granuloma inguinale, leprosy (infectious), lymphogranulomavenereum, syphilis (infectious stage), and tuberculosis (active). HIV and Hepatitis are not on this list as of October 2010.

32. Can I be admitted to the U.S. as a visitor after my I-526 or my spouse's I-526 is filed with USCIS?

In many cases, I-526 investors with an existing tourist or student visa may continue to use those visas for entry to the United States with definite return date and a specific purpose of visit. However, the filing of the I-526 establishes immigrant intent on the part of the investor.



Additional factors, such as whether or not the individual has secured a job or a home in the United States, may complicate the entry process on an existing tourist visa. The Customs and Border protection officer at the airport handle admission and has the discretion to permit or deny entry.

33. Can I be admitted to the U.S. as a visitor while waiting for consular processing of the immigrant interview after my I-526 or my spouse's I-526 is approved?

In many cases, I-526 investors with an existing tourist or student visa may continue to use those visas for entry to the United States with definite return date and a specific purpose of visit. However, the filing of the I-526 establishes immigrant intent on the part of the investor. Additional factors, such as whether or not the individual has secured a job or a home in the United States may complicate travel on an existing tourist visa.

34. Does membership in a Communist party bar admission to the United States as an immigrant?

Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party, domestic or foreign, is inadmissible. Exceptions to this are if the membership was involuntary solely under the age of 16 by operation of law, if the membership was terminated at least 5 years prior to application for admission or 5 years if a member of a party controlling the government and the immigrant is not a threat to U.S. security, or if a waiver is granted to the applicant on the basis of that applicant having an immediate family member who is a legal permanent resident of the United States.

35. What is the difference between the regular EB-5 immigrant investor program and the EB-5 regional center pilot program?

The regular EB-5 immigrant investor program requires the petitioner to directly create full-time employment for at least 10 (ten) U.S. citizens or authorized immigrant workers.

The EB-5 regional center program allows the petitioner to either directly or indirectly create full-time employment for at least 10 (ten) U.S. citizens or authorized immigrant workers.

36. Who can apply to the EB-5 program (Both regular and regional center one)?

Petitioners for EB-5 immigrant investor program come from different backgrounds: professionals, entrepreneurs, retirees, and parents who wish to obtain U.S. permanent resident status for their children.

37. Can my investment in a regional center involving a loan structure have a third-party guarantee?

Yes. Pursuant to the December 14, 2009 USCIS Questions & Answers, there is currently nothing in the statute or regulations to preclude the guarantee from the third party as long as the alien investor's capital is still "at risk", and the arrangement does not constitute a redemption agreement



or a guaranteed buy-back arrangement for the alien investor's investment in the commercial enterprise. The determination as to whether a specific third-party guarantee is contrary to the statutory and regulatory requirements has to be made on a case-by-case basis.

38. Can I use funds unrelated to the EB-5 investment in a regional center to purchase insurance from a third party for my investment?

Yes, pursuant to the December 14, 2009 USCIS Questions & Answers, as long as the alien investor's capital is "at risk", and the indemnity policy does not constitute a redemption agreement or a guaranteed buy-back arrangement for the alien investor's investment in the commercial enterprise. The determination as to whether a specific indemnity policy is contrary to the statutory and regulatory requirements has to be made on a case-by-case basis.

39. How do I maintain lawful permanent residence?

Pursuant to Section 101(a)(20) of the Immigration and Nationality Act (INA), "the term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

Any lawful permanent resident who spends extended periods of time outside of the United States may be confronted with problems upon attempting to reenter the U.S. When a lawful permanent resident reenters the U.S. after an absence of more than six (6) months or 180 days, an individual may be considered an "applicant for admission" under federal immigration laws. *See* INA §101(a)(13)(C). Therefore, upon entry, proof of fixed ties to the United States may be required for an alien to demonstrate the intent not to abandon permanent residency.

Major factors that are examined in determining an alien's intent to permanently reside in the United States are the length of the alien's absence; the purpose of the alien's departure; the existence of facts indicating a fixed termination date for the stay abroad; ownership of property, bank accounts, credits cards, a driver's license in the US; location of an alien's close family members; the location and nature of the alien's employment.

40. As a lawful permanent resident, may I leave the United States for an extended period of time?

If you are a lawful permanent resident and plan to be abroad for an extended period of time, you must take measures to preserve your permanent resident status. If you must depart the U.S. and you expect to remain outside of the United States for a period of more than twelve (12) months, but not more than twenty-four (24) months, you may request the issuance of a Re-entry Permit. One must apply for the Re-entry permit while they are physically present in the United States and the permit, if issued, is valid for a two year period. *See* INA §223.

41. How does a lawful permanent resident become a naturalized United States citizen?



To become a naturalized U.S. citizen, a Lawful Permanent Resident must reside continuously in the U.S. for a period of five (5) years following lawful admission to permanent resident status, must not be outside of the U.S. for one year or more at any given time and must be actually physically present in the U.S. for at least half of that period. *See* INA §316. Maintaining continuity of residence for naturalization purposes is a different issue from that of maintaining permanent resident status.