

EB-5

United States Immigration through Investment

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through Investment

NOTICE AND DISCLAIMER

This book is intended for the private and personal enjoyment of the reader. It is not intended as a legal guide to securing United States immigration status. You must consult your professional advisors to accomplish this purpose. The statements and opinions of the author are strictly his and are not intended to constitute legal advice. Each situation and case is different and therefore requires individual attention. The selection of any professional advisor should not be based solely on advertisement. Request written references from any advisor you may select before hiring services.

*To my father,
Joseph A. Behar
Patience. Perseverance. Honesty.*

Biography

In December 2007, developer Samuel Sutton of Lake Buena Vista Resort Village & Spa, delivered a challenge. He wanted the creation of a regional center in an area proximate to Disney World in Orlando, Florida. As a result, Mr. Sutton turned to immigration veteran, Larry J. Behar of Fort Lauderdale, Florida.

Prior to that date, the only regional center which had been created in Florida was in 1996 covering a small area in Miami Beach. Sadly the regional center developer there had passed away and nothing emerged from the regional center plans. Undiscouraged, Sam engaged Larry to create his regional center for the development of a resort project and to preserve the large number of jobs which he had created.

With limited guidance and few legal or practical resources, Larry ensured the submission of the 1000 page application to United States Citizen and Immigration Services (USCIS) in four months. Five months later, in September of 2008, USCIS issued an unrestricted regional center approval.

Since then, Larry has evolved into one of the country's leading EB-5 authorities. His understanding of the law, multiple linguistic skills, business and cultural acumen have made him sought after by numerous U.S. developers and investors seeking to attract equity capital to their projects. He has personally visited no less than 40 U.S. embassies or consulates around the world.

With the support of his seasoned legal team, Larry proceeded to create the EB-5 Dream Team, a symphony of EB-5 experts who, each in their own realm, are able to advise and provide written reports for the creation of regional center submissions. The team has produced many regional center applications which include uses in tourism resorts, mega shopping centers, a hospital, gold mines, land development projects, a medical research facility, and multi-use retail hotels across the United States. These diverse applications represent hundreds of millions of dollars of investment capital and the creation of thousands of direct and indirect jobs. Together, the team provides expertise and hands on guidance at both the initial stage and throughout, for both the investor and the regional center sponsor. The Behar Law Group works to provide a 'one stop shop' of economists, business plan writers, marketing and IT experts, SEC attorneys, and U.S. EB-5 immigration authorities, all overseen by Larry.

In October 2009, Larry traveled to China as key note speaker for the first EB-5 conference held in Beijing. He ventured to China as a guest of the country's leading migration agency. With less than three days remaining in the existing law and the sunset of the legislation looming near, Larry remained confident in the extension of the law. His optimism was supported by the newly forged relationship between USCIS, Congress, and EB-5 immigration attorneys in addition to the large demand of foreign investors. His confidence in the system was confirmed on October 30, 2009 when a three year extension of the law was granted, with a promise for the possible permanent extension in new legislation.

Today, the firm continues to expand into various approvable EB-5 uses and apply its creativity in ensuring that each project it undertakes is viable and understood by and for all parties concerned. Larry continues to travel to meet directly with regional center clients, agents around the world, and investors whose lives have been entrusted to his expertise. A life well spent.

Ft Lauderdale, FL

February 19, 2010

Preface and Acknowledgments

Presently, we are at the frontier of the EB-5 world. Traditional financing tools, such as bank financing, no longer support commercial endeavors for creative U.S. developers. As such, one of the few remaining options, and a brilliant one at that, remains the ever-evolving EB-5 (Employment Based Fifth Preference) concept.

In its wisdom, Congress created the EB-5 Immigrant Investor structure in 1990. Like any child, its first decade was shaky and at times unstable. However, in seeing the long term view and potential of the EB-5 program, Congress interceded in 2001 in order to ensure the seamless coordination between the government, adjudicator interpretation, commercial ventures, and foreign investors.

In today's world, surrounded by restricted credit and domestic job losses, the EB-5 program could not have evolved at a better time. While the program continues to require increased definition and structure, it has come a long way since its inception. Recent extensions of the program have garnered support and respect from the international investment community in order to ensure the flow and continuity of the program, its U.S. job creation and job preservation components, and capital inflow which is so vital during a time of economic need.

We have many individuals and organizations to acknowledge for the creation of this fledgling book. First, the author wishes to thank the editor, Simon Tang, for his judicious comments, editorship, and guidance in the Mandarin-language version of this book. We would also like to thank the hundreds of migration agents, attorneys, agents, and finders from around the world who have been desperately seeking a simple guide book so that they may adhere to a minimum set of principles and guidance. We also thank the leadership from Invest in America, IIUSA, which has provided the guidance in Washington, D.C. and with the American Immigration Lawyers Association to ensure that the rights of immigrants, developers, and the American people are protected.

Finally, we thank our EB-5 specialist, Tania Sibonney, whose encouragement, structure, and insight have been invaluable. Throughout the process, she has carefully and diligently followed every step of the development of this effort.

As you read through the chapters of this book we anticipate that you will be able to acquire unprecedented knowledge about the EB-5 program. Whether you are a foreign investor, regional center sponsor, developer, migration agent, or the like, this book will assist you in understanding the complexities underlying the EB-5 world.

Where do we go from here? We predict that in the near future USCIS will conduct proficient 'housecleaning' efforts, removing those EB-5 regional centers which do not have viable commercial projects to support. We predict an increase in the quota of EB-5 visas from 10,000 to 20,000 once we begin to draw near the fulfillment of the existing quota. Additionally, we predict the creation of thousands of new jobs for U.S. workers which can be attributed to the EB-5 program, while infusing millions of dollars of capital into the economy. Examining foreign countries which have encouraged similar programs demonstrates that these predictions are not only possible, but are entirely likely and desirable. Ultimately, with greater security in both sponsors and investors alike, we predict a permanent enshrining of the program with no sunset.

We hope that this book will help you gain a small window of understanding into the multifaceted world of EB-5 United States Immigration through Investment.

Welcome to America!

Larry J. Behar, Esq.

Attorney at law

February 19, 2010

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≈ ≈ CHAPTER 1 ≈ ≈

1 - An Introduction to US Immigration

The U.S. immigration system is essentially divided into three categories for those seeking permanent residency:

- ◆ Close Family Ties: such as spouses, parents, brothers and sisters or adult children;
- ◆ Education: those with at least a bachelor's degree and preferably a master's degree or those with no less than 12 years of work experience;
- ◆ Money: those with no less than \$500,000 or \$1 million to invest in a qualified Regional Center in the United States or their own enterprise.

Realistically, those with family ties will seek to apply for residency through this process if: such ties are of a close degree, the waiting period is not long, and the petitioner, or sponsor, has the financial ability to endorse such an application.

Those with a higher education, referred to as 'skilled or professional workers', will need to identify a US sponsor willing to hire them for a specific job, at a specific salary, with a specific job description. Often times this poses a serious challenge for any foreign national as US employers generally seek to hire employees from within the US. Furthermore, the employer must demonstrate that it is financially solvent during the entire process time period in order to ensure that the employee will continue to be gainfully employed at the end of the process.

Consequently, we are left with the "Money" alternative. The EB-5 program was created as a job creation and foreign investment program specifically to encourage high net worth individuals to migrate to the US, stimulate the US economy, and make a valuable contribution to society. While there are no English language skills requirements, the individual has several other qualifications which they are required to meet; most of these will be discussed throughout this book.

≈ ≈ CHAPTER 2 ≈ ≈

2 – The EB-5 Program, A Triple Win:

Job Creation, Capital Infusion, and Immigration through Investment

The EB-5 program is congressionally mandated and has been in existence since 1990. Congress intended the program to create jobs for Americans and stimulate investment, at the rate of ten direct jobs per investor family.

Subsequently, a Pilot Program which created the Regional Center concept was passed into law. The regional center pilot program allows U.S. sponsors to create investment opportunities in which the investor could place their funds. The benefit of this investment opportunity is that the job creation component would become the responsibility of the Regional Center sponsor instead of that of the investor. In this case, the law allows the sponsor to create ten jobs directly and indirectly within a prescribed geographic area known as census tracts.

The word ‘directly’ implies that the U.S. employee hired by the Regional Center will be working full time for 35 hours per week and that a W2 form, demonstrating the employee’s income, will be filed with the Internal Revenue Service. The word ‘indirect’ or ‘induced’ refer to those jobs which are ‘deemed’ to have been created in the community as a direct stimulus result of the new Regional Center. All businesses must have been created after 1990. Thus, while each investor family must generate ten jobs for US residents or citizens, the direct and indirect jobs may be combined in order to meet the requisite total. The job creation component is established pursuant to an economic model which is developed by qualified economists and submitted to the United States Citizenship and Immigration Service (USCIS) as part of the application for regional center designation.

It is clear that the EB-5 program has had a checkered history, among which there were minor setbacks along the way. However, through legislation enacted in 2001, Congress demonstrated that it wanted to ensure the preservation of the EB-5 program through an increased structural approach. Since then, the program has demonstrated a greater level of security, although the program does require, intrinsically, that each investment carry an investment ‘risk’.

What is this risk? First, the investor must assess and determine the financial risk of the project. Second, he must ensure that the documentation and approvals at both the USCIS and consular levels are met. Third, initially the investor will only be receiving a two year conditional residency. Ultimately, this

will translate into permanent residency status only when the sponsor creates the project and can prove that the jobs necessary to the lifting of the conditional status have been created (a total of ten direct and indirect jobs per investor).

That being said, the future of the EB 5 program is very promising. An increasing number of people are aware of its existence, its utility and benefits. The number of investors signing up with responsible and viable regional centers is continuing to grow as they view the program as a fast track to US residency wrapped in a valuable investment. More politicians and economic development officers understand the nuances of the program which has now created thousands of jobs and generated billions of dollars into the US economy. The EB-5 program is a logical and natural win/win platform for the U.S. economy, U.S. sponsors, and foreign investors.

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3 – EB-5 Legislation: From Past to Present

The EB-5 program is the result of a legislative effort to promote job creation and the infusion of foreign capital into the U.S. economy. This structure was developed during a time when the U.S. economy was thriving and represented an underlying promise of continued strength. However, this writing, in light of the restricted credit market and elevated unemployment rate, it is evident that the U.S. is in the midst of tumultuous economic times. Unlike the financial strength that the U.S. exuded at the time that the EB-5 program was enacted, a new source of capital investment received through foreign investors, which will result in the development of numerous new employment opportunities for Americans, provides a promising opportunity for growth and redevelopment across the nation. The EB-5 program provides a glimpse of hope to political leaders, developers, U.S. workers, and foreign investors alike.

It has taken many years to improve and enhance the benefits of the EB-5 program in order to ensure that it meets its goals and the expectations of its beneficiaries. The USCIS is actively engaged in the process and works diligently to continuously modify its regulations. Together, with the various regional centers across the U.S., the USCIS is expanding its knowledge through the daily successes and challenges of the program. Although Congress has extended the program numerous times, at present the EB-5 program is scheduled to sunset on September 30, 2012, Congress now understands that to ensure its continued success the program must receive a permanent extension to guarantee the security of duration and consistency. This permanent extension is contemplated in the Comprehensive Immigration Reform Bill of 2010.

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4- The Role of Governmental Agencies in the EB-5 Program

The organizational structure of the EB-5 program can be quite complex. Let's take this time to clarify the various US governmental agencies associated with the program. To begin with, there is the United States Citizenship and Immigration Service or USCIS, which is at the forefront of the EB-5 field. This agency is charged with the review and approval of all regional centers across the United States from its headquarters in Laguna Niguel, California. It is also responsible for the review and determination of all petitions for conditional residency with the filing of a form called the I-526-Immigration Petition by Alien Entrepreneur. This essential, yet seemingly simple form, will be discussed in future chapters. Upon receiving regional center designation, a regional center agrees to abide by the regulations governing the program, and verifies such compliance in their annual compliance report. This annual report is submitted to and reviewed by the USCIS. Upon submitting the I-829 petition, requesting the lifting of conditional residency, the USCIS is also responsible for determining the legitimacy of the application.

As you can see, USCIS oversees the entire EB-5 process. Therefore, it is imperative for you, as a sponsor or investor, to be well organized throughout the process right from the beginning. Please consider acquiring a large three ring binder with many transparency pages to contain all of your U.S. immigration documents and receipts. You will receive many documents from your attorney and from the government; therefore it is essential that you maintain all records in a sensible and orderly fashion. Keep a list of each and every document, receipt or instruction you receive as it is easy to get confused with the multitude of documents and legal complexities.

The other government agency that you, as an investor, will need to address is the U.S. State Department. This agency will review the individual immigrant investor application and assess whether there is any basis for inadmissibility. There are various reasons to support a rejection of the application which include but are not limited to: prior criminal record, fraud convictions, etc. Thus, while an approval of the I-526 application is laudatory, it is not the final step until the State Department issues its sealed envelope of approval.

Following the State Department's approval, the investor and his or her family will physically enter the US and will be inspected at a port of entry. This

inspection is conducted by the Department of Homeland Security. An officer will review the approval notice and stamp, an approval called an I-551, to ensure and date the formal entry into the U.S.

Once the new resident has been admitted, he or she will undertake all normal internal applications with which a U.S. resident must comply. These include but are not limited to acquiring: a U.S. social security number from the Social Security Administration, a driver's license from the Department of Motor Vehicles of the State in which he or she will live with his or her family, and we also recommend a state identification document.

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5 – What is a Regional Center?

A regional center is no more than a defined geographical area in the U.S within which a sponsor seeks to promote economic growth through increased export sales, improved regional productivity, the creation of new jobs, and increased domestic capital investment. The regional center can be as large as an entire state or as small as one square city block.

In developing and operating a designated regional center, the regional center seeks to exploit a specific use for its benefit and those of foreign investors. In doing so, the regional center ascertains the target market and demographic to which the regional center will deliver its services. The following is a sample of the uses that a regional center may chose in modeling its projects:

Film & TV Production	Health Services
International Traffic & Cargo	Manufacturing & Research
Commercial Office Space	Hotel, Leisure Resort
Higher Education	Trade Schools/ Culinary Schools
Airport & Seaport Operations	Technology and technology transfers
Tourism	Transportation
Mixed Hotel, Office, Retail & Residential space	Conference Centers & Exhibition space
Light & Heavy manufacturing	Cruise Line support
Renovation of obsolete buildings	Performing Arts
Historical sites & similar Institutions	Mixed use : Real Estate
Construction and renovation	Harbor facilities
Gaming & Casino sector	Marine Sector
Apartments & Condominiums	Air Cargo
Banking/ Lending	Warehouse Distribution
Mining and exploration	

Regional centers are presumed to require a \$1 million investment per investor family, unless the project is situated in a Targeted Employment Area ('TEA'). This 'TEA' can be located either in a rural area where the population is determined to be 20,000 or less, or, where the unemployment of the defined area is no less than 150% of the national average. For example, there are many resort projects which are located in mountain areas, where the local population did not exceed 20,000 in the last census count. Other projects may be situated in areas which are in need of rejuvenation and where the

unemployment levels are high. Under either scenario, the Congressional intent is to provide and encourage the much needed economic activity and development to these often remote or blighted areas.

Sponsors of regional centers undertake a great deal of responsibilities to develop, manage, and complete the project. Their duties and obligations are incorporated in the parameters of documents known as the Private Placement Memorandum, Subscription Agreements, and Operating Agreements. These documents govern the conduct of the sponsor and the investor and must be strictly respected and abided by all policies. No document can be signed within the U.S. as the program is strictly designed for foreign nationals.

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6 – Where are Regional Centers Located?

Regional Centers are located across the United States. You can find a regularly updated list of approved regional centers by conducting a general search for “Immigrant Investor Regional Centers” on the USCIS website: www.uscis.gov.

If you are unsure about in which regional center you would like to invest, it is essential to hire a qualified analyst to assist you with that determination. It is common for many regional centers to make overly optimistic claims, thus you must be cautious. We highly recommend an on-site visit. Be sure to gather all of the information that you require to make a qualified and educated decision. Ask questions and ensure that you receive the necessary answers.

Regional center sponsors, sometimes referred to as developers, carefully select the areas in the United States which best suit their business objectives. However, you must be aware that the selection of a specified area does not guarantee the success of the project.

Many state governments also elect to participate in a state wide regional center and allow projects within their state to go through a screening process. Ultimately, that project is added as an amendment to the original regional center approval. While this does enhance investor confidence, it too does not guarantee the success of the project.

Many regional centers elect to apply for a ‘use’ related to the activities of the geographic region of their state. For example, a mountain or beachside state may wish to apply for a use as a ‘resort’ or ‘hospitality center.’ Other centers may be located in farmlands and are likely to apply for such uses as ‘dairy farms’ or the revitalization of former US government assets such as military bases.

Regardless of the location or specific use, it is incumbent upon the investor to ensure that they will be investing in a viable project and that the proposals of the business plan are fully realized ‘on the ground’.

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7 – Who Operates the Regional Center?

A regional center is normally created and operated by experienced developers or business people who seek to begin or expand existing businesses. It is therefore essential for you to receive and assess their credentials and their ability to ensure that the project will be so created and that the job creation requirement will also be fulfilled as a result of the program.

Although the USCIS oversees the overall EB-5 program, investors must be aware of the limitations pertaining to each and every regional center in order to make a qualified judgment. As the number of USCIS approved regional centers continues to increase at a rapid pace, it becomes ever more difficult for an investor to make a well-informed decision. Our recommendation is for each investor to visit and interface with no less than six regional centers before finalizing an investment decision. A credible certified public accountant or EB-5 attorney may be able to refer you to qualified professionals within the EB-5 field and/or offer assistance while you are weighing the options available to you. Be sure to review and analyze all reports exhibiting the actual and projected cash flow for the regional center. If possible, speak with other investors, request the regional center's scorecard as to their success rate, and try to assess the mix of nationalities in the program.

Additionally, it would be beneficial to review the developer's overall history both in a general business context and EB-5 specific projects. A positive determination is if the developer has standby credit for the erection of any new project, backup plans, and exit strategies to be applied as needed. Clearly, the sponsor must not have a criminal record or any evidence of prior bankruptcies. In addition to discussions with the principal sponsor, the investor should engage the services of partners, development and management personnel, and other service providers who are hired to support the project in its entirety. All parties and entities are subject to your review before finalizing your investment. Do not rely solely on the terms and conditions of an escrow agreement to have the funds returned in the event that the project does not materialize.

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8 –Why are Regional Centers Created?

Aside from creating an enticing platform for U.S. residency, the regional center concept is premised upon the thought that pooling investor funds into one project is safer and constructive when compared to the risks associated with creating, managing, and developing an individual investment project.

Furthermore, U.S. developers like to expand the diversity of their investor pool and provide a fresh source of capital as they welcome foreign investors. This process further reduces the risk of liquidity as many transactions are all-equity with little or no bank financing. Since the primary motivation for many investors is U.S. residency, a small but reasonable return on their capital is usually expected and provided.

The job creation component is a motivating factor underlying the development of the regional center program. This requirement is of great interest to Congress as well as the U.S. economy as a whole. Dependent on the total number of investors, a regional center may be required to create thousands of direct and indirect jobs which will satisfy both the project and the lifting of the conditional status of the investor. This requirement is fulfilled relatively early on in the process as the job component must be demonstrated no later than 24 months after an investor receives his or her conditional U.S. residency.

While there is no bar to individual investors creating their own EB-5 application, this investment would require the creation of ten direct jobs, continued on-site management, and the risk of having to infuse greater capital to keep the business active. However, when investing in a Regional Center, an investor is relieved from those obligations as the Regional Center satisfies the job creation requirement, provides its own daily on-site management and development, and has no additional requirements for capital participation.

Additionally, during this period when traditional methods of financing have become limited and in many cases restricted, the EB-5 program and the regional centers created as its consequence, have opened the door welcoming a new form of alternative financing.

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9 - State Government Support

The development of an EB-5 designated regional center requires the collaborative effort of legal and political professionals, as well as qualified developers. As such, government support of the program is an important aspect of a regional center's success. However, states do vary in their level of support for the EB-5 program. Therefore, it is important to recognize those states which strongly support the program. Normally, the economic development agencies of the state are responsible for the origination and development of state wide regional centers. Generally, this expands to include the governor's office and state elected officials. Major developers who have valid EB-5 qualified projects participate by ensuring that their projects comply with the 'uses' for which the state has applied for in conducting the regional center. These uses may include: resorts, hospitality, technology, and/or others.

Prior to investing in a regional center, it may be helpful to meet with state employees who are familiar with the EB-5 program. These individuals are available to meet with you and discuss the merits of the EB-5 program in their state. Oftentimes, they will also be able to facilitate introductions with the project sponsors and other key people in the state, including the governor who is the state's chief executive officer. Be wary of states who do not know or understand the EB -5 programs or who do not have an intimate knowledge of its functions.

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10 – Quotas in EB-5

The United States admits approximately 1 million new immigrants annually. Of that total, only 1% or 10,000 enter as EB-5 investors. Currently, there is no waiting time as there had been a dearth of projects from which to select in the U.S. until fairly recently.

Of the 10,000 visas available, a minimum of 3,000 visa numbers are set-aside and designated for investors in a regional center. As such, the visas reserved for regional center applicants do not limit the number of visas which can be granted annually up to the present 10,000 quota. Encouragingly, while it would appear that the availability of visas is in fact limited, the EB-5 program has never suffered an oversubscription which would create a needless backlog. NOTE that to date this quota has never been reached and is available to virtually every country applicant. As such, the fact that there is no immediate concern about oversubscription still remains true. Approved Investors can live anywhere in the United States.

When considering a regional center as a vehicle to residency through the EB-5 program, it is essential to monitor the monthly quota and status reports as issued by the State Department at: www.state.gov. It is through this website that you will be able to determine the advantages and speed associated with the EB-5 program when compared to any other Employment Based (EB) category.

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11 – Targeted Employment Areas

We have briefly touched on the subject of targeted employment areas, which are commonly known as 'TEAs'. It is important that you have a good understanding of their functioning.

Before a regional center is created, the developer will research the census tracts as determined by the department of labor of his state. Based on this official information, he can then determine if the project qualifies as a TEA under population trend guidelines; wherein the population cannot exceed 20,000. The census tract must be recent and based on the most current census information obtained by the state. Each county and area within the state will have a census tract as they often rely on federal funding for supplementary support. If a TEA is not identified, then the default position is always a \$1 million dollar investment threshold for the investor.

An alternative method used to qualify as a TEA is determined by the unemployment levels in the area into which the sponsor seeks to locate the project. As such, if the unemployment level surpasses 150% of the national average as determined by the Department of Labor statistics, then the sponsor has an opportunity to outline the territory for his TEA. The advantage, of course, is that the sponsor will be able to offer the investment to foreign nationals at the \$500,000 level. For example, if the average unemployment level in the country is 10%, then the sponsor will need to identify unemployment levels at 15% or higher. The purpose is to encourage local economic stimulus through sponsor-created programs. With such unemployment levels, the investor must be cautious of the economic prospects of the program. Accordingly, it is important to ensure that the sponsor has a clearly identified and successful track record of prior projects and approvals.

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12 – Direct vs. Indirect Employment

Under the general rule, a foreign investor is required to invest \$1 million in a commercial enterprise to qualify as an EB-5 investor. An exception to this rule are those who invest in Targeted Employment Areas, which can comprise areas in the U.S. where the population is 20,000 or less, or, where the unemployment levels in the target census tracts are 150% of the national average or higher.

The benefit of creating a Regional Center is that the sponsor is able to fulfill the job creation requirement by creating ten jobs both directly and indirectly for investors in the project. ‘Direct’ jobs are those U.S employees who are employed by the sponsor at the subject project and collect a salary which is reported as income on a W2 form to the Internal Revenue Service; ‘Indirect’ jobs are those which are deemed to have been created in the community as a positive result of the original investment.

It is clear from a development perspective, that having the ability to fulfill the job creation component with fewer direct jobs in relation to indirect jobs will minimize the financial burden on the sponsor and make it more feasible to satisfy the requirement. Evidence of the direct jobs having been created are submitted at the time of the removal of the conditional residency for the investor, in addition to being a part of the annual reports submitted by the regional center sponsor to the USCIS EB-5 unit for compliance purposes.

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13 - Job Creation:

The “Reasonableness” Standard

One of the underlying intents of the U.S. Congress in the creation of the Immigrant Investor Program was to encourage the creation of jobs for U.S. citizens and lawful residents. This intent has never been more worthy than in the current global economy.

That being said, it is not unusual for a regional center developer to commence a project, attract investors, begin construction, while being unable to meet the precise number of jobs created as contemplated in the original business plan.

The regional center’s business plan, as filed with the I-526 application, can be considered as the road map used to determine whether the capital investment has been made, that the proposed capital investment project is feasible, and that the requisite number of jobs have OR can reasonably be expected to be created at the Form I-829 stage.

This definition of ‘reasonableness’ has been defined in the Adjudicator’s Field Manual and includes, but is not limited to such preponderant evidence as that which is submitted with the petition. The supporting evidence is expected to demonstrate when the jobs are anticipated to be created, the reasons why the jobs were not created as contemplated as depicted in the Form I-526, the nature of the industry or industries in which the jobs are to be created, and any other persuasive evidence which the petitioner can provide. NOTE that demonstrating the creation of ten jobs directly and indirectly is a strict minimum necessary in order to have the conditional status lifted.

Thus, while EB-5 adjudicators normally require precise and visible job creation content, it is worthy to note that they have a certain degree of flexibility in their assessment and use their wisdom and experience to determine that a project has been initiated and is on its way to the creation of the required jobs. While it is recommended that the jobs be created within the two year period after obtaining approval of the I-526 for the investor, sponsors, who have the obligation of demonstrating the jobs, will be able to rely on their projections and their actual flow of job creation to assist the investor to lift their conditional status.

≈ ≈ CHAPTER 14 ≈ ≈

14 - Professional Employer Organizations

For purposes of expediency, management, and savings, many regional center sponsors utilize the services of a Professional Employer Organization (PEO) which is charged with issuing checks, conducting tax withholdings, and any other convenience accounting and tax issues on behalf of the employer. Some employers have thus been questioned as to whether these employees who receive payment from the PEO are, indeed, “employees” of the Regional Center sponsor or the PEO. Thus, the pressing question remains; how is the job creation requirement met?

The determining issue remains whether an ‘employer-employee’ relationship exists. In other words, it is of great importance to determine who is responsible for directing the work product of the subject employee, who has the authority to hire and fire, and who establishes the salary and other scales of compensation. Practically speaking, the petitioner-established commercial enterprise controls the work of the employees and subsequently provides the funds to the PEO to compensate the employee.

The PEO must ensure that the employees are paid by the commercial enterprise into which the petitioner has made the required investment. The sponsor must demonstrate by evidence of contract or otherwise that it has ‘control’ over the employee even though the salary is paid from another source. The USCIS has elected to decide the validity of the employer-employee relationship on a case-by-case basis. It is therefore essential that where PEOs are utilized by the commercial enterprise that a copy of the agreement be annexed to the filing of the lifting of the investors’ conditional status.

≈ ≈ CHAPTER 15 ≈ ≈

15-How to File a Regional Center Application

With limited and restricted financial options, developers are seeking alternative financing through the EB-5 program. This may include all equity participation by the investors, or a hybrid of partial financing and EB-5 investors. Each regional center application and project is accompanied by a comprehensive business plan.

A regional center application is filed with the USCIS in Laguna Niguel, California. It is a long and pain staking process which will include the necessary reports for the proposed regional center and will include a Business Plan, Econometric Models, Marketing Information, SEC documentation, and Immigration components.

The detailed submission is collated by experienced counsel and submitted for review to USCIS, which can take several months to conclude its review. If the USCIS has further questions or concerns, it can issue a Request for Further Evidence, known as an RFE. This is not unusual as no regional center application is perfect, although some are approved on the first submission.

Once approved, the regional center will be able to operate within a prescribed geographical area for one or several specific uses. If the purpose is not applied for within a reasonable period of time, normally one year, the regional center can lose its accreditation. This is a serious situation if any investors are already committed to the project.

Finally, it is always helpful to identify a regional center which has a defined purpose and project. A regional center which does not contain a specific project from the beginning is doomed to flounder seeking the first project or opportunity. Today, there are a wide variety of projects to choose from, thus such wishful projects are no longer necessary or desirable.

≈ ≈ CHAPTER 16 ≈ ≈

16 -Regional Center Compliance

A designated regional center receives the benefit and thus a privilege to operate a specific use or uses as conferred by the USCIS. Not all regional center designation applications are approved. As such, the receipt of regional center status is a much coveted benefit to the sponsor and their investors.

In order to preserve its qualification, the regional center must be prepared to file an annual report with the USCIS which will provide required information pertaining to each investor including the names, nationalities, and investment amounts. The annual compliance report will allow the USCIS to monitor the progress of the program, and to assess any dangers of overconcentration in one area of the world, or flaws in the recruitment of certain investors. The EB-5 program collaborates with the United States of America's goal to constantly seek diversity, even amongst its wealthier immigrants.

Failure to file the report on time may oblige the USCIS to revoke the Regional Center status of a specific pre-approved center. Aside from the legal liability of the sponsor for this oversight, it places the investors in serious jeopardy of not being able to file the I-829 lifting of conditional residency.

≈ ≈ CHAPTER 17 ≈ ≈

17- The Adjudicator's Field Manual

As part of the disclosures made by USCIS, the Adjudicator's Field Manual is available for review and direction by attorneys and investors alike. It is a treasure trove of information and guidance given to field officers who actually adjudicate applications for residency through the EB 5 program.

A word of caution: while the Manual is generally mandated as being compulsory conduct for officers and decision makers, many officers will rely on their personal experiences, comparisons with other applicants, internal memos and jurisprudence in addition to the Manual. Thus, it is not the sole basis for the decision of the officer and thus cannot be relied upon entirely by readers.

Further, the Manual can and is updated from time to time thus it is important to review the latest version and assess any changes thereto. The author of the Manual is also important, i.e. who actually authorized and signed the Manual may have an importance as to the direct following and interpretations by the field officers.

You may find the latest version on the Internet at the following URL:

<http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=724ce55f1a60168e48ce159d286150e2>

≈ ≈ CHAPTER 18 ≈ ≈

18 – Audit of a Regional Center

The USCIS has the right to make unannounced on-site inspections of any regional center to determine if they are adhering to their business plan, to ensure that there are and have not been any material changes, that no fraud has occurred, and that all SEC regulations are being respected and followed.

In the event of a violation, the sponsor will receive notification to take corrective action, and will be given a reasonable period of time to do so. In the event the corrective action is not taken, the regional center accreditation may be revoked

NOTE that the USCIS creates files for each and every regional center it approves. There is a constant dialogue with the regional center to ensure its full development and compliance. Accordingly, responses from the USCIS center are normally swift and decisive.

≈ ≈ CHAPTER 19 ≈ ≈

19– Administrative and Marketing Fees

It is recommend for a regional center sponsor to affiliate themselves with a Marketing company whose purpose is to provide support services and logistics for EB-5 approved regional centers. In offering such support, the Marketing affiliate will provide assistance throughout the EB-5 process, to both the immigrant investor and regional center as a whole.

To begin with, the Marketing affiliate will oversee the components necessary for the regional center’s annual compliance report. The USCIS requires an annual report which comprises seventeen components to assure continued regional center status. Failure to submit such a report in a complete and timely basis places the regional center at risk of losing its accreditation. The report is based on information collated from the regional center sponsor and its investors. It is filed with the EB-5 specialty unit in California.

Second, an approved Regional Center requires ongoing, virtually daily administration of its progress, position, and competition in the marketplace. The marketing affiliate ensures that proper procedures are implemented to ensure that the regional center realizes the highest standards of ethics and professionalism in the marketplace.

Third, the marketing affiliate is charged with an advisory role to the regional center to ensure it has maximum legal exposure in the international market place. The firm will opine on exhibitions, written, or digital materials, logos, websites, power point presentations and any and all materials which are allowed to be submitted to the public in adherence of SEC Regulation requirements and in compliance with the approval of the regional center by USCIS.

Fourth, a primary source of investors for EB-5 purposes is derived from qualified and licensed migration agents and immigration attorneys. The marketing affiliate is charged with interfacing, educating, and communicating with these professionals to ensure a speedy, virtually real time response in the language of their choice. Additionally, the marketing team will equip the professionals with documentation and assist in the direction to be given their clients.

Fifth, the marketing affiliate is charged with receiving and fielding all investor questions, concerns, and documentation to ensure a smooth flow of communication with the regional center whether by web responses or other

means of communication. This is normally handled by qualified staff in the language of the choice of the investor or through qualified interpreters. Again, this is a daily operation with a report being submitted regularly to the regional center sponsor.

Additionally, the regional center can expect the marketing affiliate to assist in the development and set up of attractive booths that will be presented at exhibitions. These booths will be attractive and in the language of the host country, and will be used to interact with host organizers to position the regional center in the best light. The marketing affiliate will also provide supporting documentation and power points to supplement existing websites and other marketing materials. The affiliate will also seek to staff the booth at the exhibition to provide qualified and complete answers to regional center inquiries.

The marketing affiliate will also request the regional center sponsor to have the regional center placed on a U.S. tour for prospective foreign investors so that they may become intimately familiar with the program and the particular project. Expenses for such excursions are normally underwritten by the investors with some 'host' fees to be paid for by the sponsor. The tours are organized by the marketing affiliate in conjunction with tour organizers overseas.

The costs associated with the business activities of the marketing affiliate are underwritten by the prospective investors as they constitute legitimate and authorized administrative expenses associated with the regional center. Such fees are normally paid for at the beginning of the process to ensure continued service by the marketing affiliate on behalf of the regional center. The professional image and high level of service are essential to the success of the regional center.

The value of the multiple services listed and those services which are not listed but are provided by the marketing affiliate as a matter of course on a daily basis are essential to the success of the regional center.

≈ ≈ CHAPTER 20 ≈ ≈

20 – The Offering Memorandum

Every regional center investor will be required to participate in the “Offering” documentation related to the business development of the regional center. The offering memorandum or private placement memorandum will outline all of the risks that are associated with the project. Upon reviewing this document, as well as the subscription agreement and the operating agreement, the investor will be asked to sign an acknowledgment that he or she understands, agrees, and will abide by the restrictions of this memorandum affecting the regional center.

The offering memorandum and related documentation is normally drafted in the English language. If you do not understand the extent of your legal and financial commitment after reviewing the English language version, it is recommended that you consult with an attorney in your area, who will be helpful in explaining the proper language of these important documents in your native tongue. It is virtually impossible to properly translate this complex set of legal documentation into the language of each investor’s home country.

≈ ≈ CHAPTER 21 ≈ ≈

21 – Welcome to Opportunities in the US: Investor Visas or Permanent Residency

This chapter will delineate the difference between two of the investment opportunities which are available in the U.S. Each category offers either temporary or permanent residency status. When determining which option best suits your personal needs and capabilities, be sure to consider the comprehensive dynamics of each investment category.

Who Are You?

- ❖ A national of your resident country;
- ❖ You have no criminal record;
- ❖ You demonstrate a desire to live in the United States either temporarily or on a full time basis;
- ❖ You have the available capital to invest a minimum of either \$100,000.00USD for a temporary visa, or \$500,000.00 or \$1Mln USD for full residency.

What Are the Investment Categories?

- ❖ Temporary Visa;
- ❖ E-2 Investor Visa;
- ❖ Permanent Visa;
- ❖ EB-5 Investor Program.

Where Will You Invest?

- ❖ For an E-2 Visa, you can invest in a real commercial enterprise located anywhere in the U.S;
- ❖ For Full Residency, you can invest in a designated, government pre-approved regional center or create your own enterprise;

Why Invest in America?

- ❖ Personal Security
- ❖ Preservation of Capital and Interest
- ❖ Family Growth and Education
- ❖ Ease of Movement of Funds
- ❖ Liquidity and Banking
- ❖ Business Friendly Tax System in Florida
- ❖ 300 Million Person Market
- ❖ Security of Political System and Economic Market

What Type of Business is Available For You to Invest in...

- ❖ For an E-2 Visa, you can invest in any business which can generate more income than just to cover your standard of living;
 - Any business which requires a “substantial” amount of capital
 - A business similar with which you are familiar;
 - A business which you will enjoy;
 - A business which has a good return and prospects of longevity;
 - A business which can be sold easily;
 - A business which has a good and verifiable track record
- ❖ For EB-5, Permanent Residency you can invest in a USCIS approved regional center in the U.S.
 - As of February 2010, there are over 80 Regional Centers however, each requires investigation;
 - You need to do your due diligence and consider the regional center’s prior success rate and timing.

Which is the Best Choice?

- ❖ E-2 Visas are designed for persons with a “working” future;
 - The investor’s spouse receives automatic unrestricted work authorization;
 - The E-2 Visa is valid for five years at which point it may be extended for an additional five years;
 - All minor children are included under the visa status.
- ❖ EB-5 Visas are designed for persons who are seeking permanent U.S. status;
 - For persons who do not want the risk of owning their own business but would rather own an interest in a tested or successful one;
 - For persons who do not want to invest time or effort to run their own enterprise or have other interests;
 - For persons who have a net worth over \$800,000.00USD

How Fast Can You Receive Your Visa Status?

- ❖ E-2 Investor Visas are received within three to four months in addition to preparation time of approximately one month.
 - The Visa is received through the U.S. Embassy in your resident country.
- ❖ U.S. Residency through the EB-5 program takes approximately 60 days for the filing of your conditional residency application, and another 120 days to receive a response
 - Within 2 years, you may receive full residency status.

Taking the Risks Involved Into Consideration

- ❖ The risks involved in E-2 investment visas include, but are not limited to:
 - The risks associated with the startup of your own business;
 - The risks associated with the purchase of an existing business;

- The risks pertaining to the time frame to accomplish an enterprise;
- The risks associated with payroll and residing in a new country.
- ❖ The risks involved in EB-5 permanent residency option include but are not limited to:
 - The risks associated with making a large capital investment in a commercial enterprise in which you own a partial interest;
 - The risks pertaining to your confidence in the track record of the developer;
 - The risks associated with unpredictable market conditions which may change.

What Costs Are Associated With the Process?

- ❖ All legal fees and business costs are discussed and authorized by you prior to commencement;
- ❖ Legal fees are commensurate with the investment and the firm's experience.

Integrating Other Professionals into Your Decision

- ❖ It would be beneficial for you to consider developing a team of U.S. experts to assist you with your investment decisions;
- ❖ Your selection of experts may include:
 - A realtor;
 - A tax accountant;
 - A banker;
 - A doctor/dentist;
 - Other attorneys;
 - Business contacts;
 - Economic development and community organizations.

≈ ≈ CHAPTER 22 ≈ ≈

22 – Why U.S Citizenship?

Many new U.S. residents question why it is so important to take the next step toward citizenship, when U.S. residency or a 'green card' accomplishes similar benefits of work, travel and residency in the U.S.. However, it is important to remember and recognize that this is a false sense of security.

U.S. residency is a privilege, not a right, whereas U.S. citizenship is a right, and not just a privilege. As such, your protections under the law are significantly increased as a citizen when compared to that of a resident. While it is true that applicants for U.S. citizenship must be comfortable in the English language, the benefits that accompany this right are tremendous.

To begin with, a U.S. citizen is able to sponsor their parents living abroad. A citizen is also able to sponsor a foreign spouse on an immediate basis, whereas it takes several years for a green card holder to sponsor a spouse.

A citizen will be able to sponsor a child under the age of 21 and not experience significant wait periods. And finally, barring criminal activity or fraud, a U.S. citizen will retain citizenship even if he or she elects to live abroad.

Let us not forget that one of the main reasons in favor of U.S. citizenship is the right to vote which is conferred at the swearing in ceremony for U.S. naturalization; a proud moment.

Although we have merely touched on some of the key matters, there are many other benefits to U.S. citizenship.

≈ ≈ CHAPTER 23 ≈ ≈

23–Careful Selection of a Regional Center

Over the years, the number of regional centers across the United States has continued to increase. Each contains an economic plan and a business plan, evidencing their unique goal and a vision.

That said, it is important for the investor, prior to investing, to consider the project on its own economic merits, notwithstanding the U.S. residency benefits. For example, it is important for the investor to consider the following factors when determining whether to invest in a given regional center.

- ❖ The investment must be relatively safe, even if there is a deemed ‘risk’ component;
- ❖ The returns from the project during its exploration must be reasonable and reflect market conditions;
- ❖ The sponsor should have already made a sizeable financial commitment of his own to the project and thus have a vested interest in the success of the project;
- ❖ There must be a realistic expectation of return of principal at the end of the process or a stated and clear exit strategy;
- ❖ The conditional residency process must be clear and unencumbered.

It is only if you can answer ‘yes’ to all these issues, that you will feel comfortable in determining that a particular regional center is for you. You are also encouraged to visit the site and meet with its principals. Any principal who refuses such a visit is not worthy of an investment. Nonetheless, it is essential that you retain the services of qualified EB-5 professionals who will be able to assist you in making the determination and evaluate each project on a comparative basis to ensure that the selection is made correctly.

≈ ≈ CHAPTER 24 ≈ ≈

24 – A Cultural Analysis

As the vast majority of foreign investors hail from foreign countries and have little, if any, contact with the United States in a business context, many regional centers are sensitive to the cultural issues which may separate a happy union with the prospective investor.

As such, many sponsors will hire native language interpreters and translators to ensure that the communication is made properly and in the language most accommodating to the investor. Additionally, print and electronic information may be translated into the subject language. It is important to consider when translating such documents that there are nuances of language which must be carefully addressed so as not to offend any one.

Furthermore, it is proper to prepare the investor both legally and psychologically, as the EB-5 process may involve an investor's first encounter with a U.S. government agency. Consider that, what may pass as an innocuous statement in the U.S., may be an offense to a foreign national investor. In preparing the investor, it is likely that he or she will also wish to understand the process in great detail and the time lines upon which he or she can rely.

≈ ≈ CHAPTER 25 ≈ ≈

25–Visiting the Regional Center

It is highly recommended that all EB-5 investors conduct an on-site visit to the prospective regional center in which they anticipate investing in. It is during this visit that the investor should make detailed inquiries from the sponsor and expect to receive transparent responses. Any sponsor that does not provide full documentation and full disclosure should be considered suspect. As the investor, you are also free to make inquiries from the sponsor's staff and professional counsel.

While the expense of visiting a prospective regional center is normally shouldered by the investor, some regional centers will make provisions for short-term room and board, in which to inspect the subject property. A proper analysis of various regional centers will include a comparison of no less than 30 different criteria, after which an informed decision can be made.

One of the greatest benefits of the EB-5 program is that, notwithstanding the investor's decision to invest in a particular regional center, neither he nor she nor his or her family are required to reside in that territory. The investor can live anywhere in the United States.

That being said, it is also useful to arrange for a personal visit to the office of the Congressional Representative either in State or Washington, D.C., to assess the support which elected officials may have provided this particular regional center. Access to a U.S. representative or US senator or his essential staff is easier in America than just about any country in the world.

≈ ≈ CHAPTER 26 ≈ ≈

26 – “Risk” of Investment Capital

As opposed to other investment structures available throughout the world, the EB-5 program in the United States was created with the goal of assisting domestic areas and businesses which needed it most. As such, the element of ‘risk’ becomes a key component.

What is ‘*risk*’? Risk is the financial position into which the investor will find him or herself to attempt to attain U.S. residency by investing in an approved EB-5 project of any nature.

For example, the risk may comprise of:

- i. the type of investment;
- ii. the location;
- iii. the capital structure;
- iv. the history of the project.

“Troubled businesses” may also qualify as EB-5 businesses, and, having already been so qualified, may contain a significant element of risk but may also be a benefit as to job preservation and job creation. A “troubled business” is one that: has been in existence for at least two years, has incurred a net loss for accounting purposes during the twelve (12) or twenty-four (24) month period before the petition was filed, and for which the loss for such period is at least equal to 20% of the business’ net worth before the loss. An incentive for investing in a troubled business is that it does not require the creation of ten (10) new jobs, but merely requires that the business maintain the number of existing employees during the conditional status period.

Every investor must investigate his or her level of tolerance for risk and choose an investment project accordingly. The higher one’s level of tolerance, the riskier the project the investor can accept. However, with a multitude of qualified and low risk programs available, this may not be desirable or necessary. Many projects add safety precautions to reduce the risk component and thus render their project more marketable. It is up to you, as the investor, to determine all the conditions of eligibility into the regional center and make a wise and informed decision.

≈ ≈ CHAPTER 27 ≈ ≈

27 – Investing in a Regional Center

Once you have made the carefully selected decision to invest in a regional center, you will begin to receive a litany of documents from both your immigration attorney and the regional center sponsor.

These documents include, but are not limited to:

- ❖ An attorney welcome letter;
- ❖ A fee agreement from your attorney which you will be required to execute and return to the attorney's office;
- ❖ Basic Steps on How to Invest;
- ❖ An EB-5 Master Checklist;
- ❖ Instructions on how to develop your "Empowerment Binder" and what documents should be contained within;
- ❖ A Reservation Agreement, which upon execution will secure your investment position in the regional center you have chosen;
- ❖ A set of Detailed Questionnaires that you, your spouse, and your children (as applicable) must complete and return to your immigration attorney;
- ❖ A disclaimer.

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28 – Flow Charts and Timelines

It is understandably easy to get confused by the time line and process associated with the EB-5 process. To begin with, the investor will learn of the program either from an analysis of a website, through large exhibitions or trade shows, by word of mouth, or by overseas solicitation. However, this preliminary research is not sufficient to make a qualified decision.

Next, the investor, upon completing his or her research and selecting the regional center appropriate to their needs, will complete the accreditation evaluation form. This form is reviewed quickly, and will allow the sponsor to enter into a reservation agreement, from which the investor will direct an initial deposit for legal and administration expenses. Normally, these funds are not refundable.

After executing the retainer agreement with legal counsel, the investor will then complete a very detailed questionnaire for himself and his family. This will provide counsel with information useful in completing the required forms associated with the submission of the application for residency.

A set of documents which will satisfy the applicable securities component of the Securities and Exchange Commission (SEC) will be sent to the investor's home country. These documents will allow for the solicitation of foreign investors but only in their home country. No documentation can be submitted in the U.S.. Note that there is no oversight from the Securities & Exchange Commission

The documents which each investor will receive include:

- ❖ a Private Placement Memorandum further referred to as an 'Offering';
- ❖ a 'Subscription Agreement' in which he/she acknowledges the terms and conditions of the Offering;
- ❖ an 'Operating Agreement' which will govern the conduct of the company related to the regional center, and;
- ❖ an 'Escrow Agreement' in which the funds are temporarily placed, pending approval by USCIS of the initial application for residency.

If the I-526 is denied, for whatever reason, the principal investment, less the legal and administrative costs, will be refunded to the investor. If the I-526 application is approved, then the application for residency progresses to either

the U.S. embassy or consulate in the home country of the investor. If the investor happens to be in the U.S., he or she along with his or her immediate family may be eligible to complete the process through the USCIS in the U.S.

Who is Eligible? Aside from the foreign investor and spouse, children under the age of 21 at the time of filing of the I-526 will be eligible to qualify for residency along with their parents. Each child will be permitted to adjust or finalize their status at the embassy, so long as the application for conditional residency was filed before they were 21 years old.

NOTE the consul is the final arbiter of issuance of the residency, as this may be based on information received in the home country from which there is usually no appeal. In a rare set of circumstances, the investor may end up being an investor in the project, but not a resident of the United States. It is therefore extremely important to be transparent and truthful with legal counsel to assess eligibility at the beginning of the investment process.

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29– Investor Accreditation Qualification

While many investors may seek to enter a specific regional center as a participant, they may find that their personal situation prevents them from doing so.

To start, the investor must demonstrate that he or she has a net worth of \$800,000 or greater. This may include cash, real estate, investments, their personal residence, and the like. The individual must also be able to provide the last five years of tax returns from their home country or at least demonstrate a clear source of funds and path of funds. The investor and their family must have no basis for ineligibility, which would include NO criminal record of any serious nature that would prevent a consul from accepting the application after the I-526 has been approved.

All of these issues are normally addressed in the regional center's initial investor accreditation questionnaire which must be completed and reviewed by their counsel to ensure entry into the regional center corporate structure. Investing in a regional center is similar to joining a private club: there are rules and regulations to ensure the success and happiness of all members. You must also assess your fluency and ability in reviewing extensive legal documents such as securities documents, business, marketing, and economic plans, and other documents which the regional center may offer you to review.

≈ ≈ CHAPTER 30 ≈ ≈

30 – Documentation for EB-5

At every stage of the EB-5 application process, you can expect a litany of documentation. Consequently, it is highly recommended for you to be extremely organized from the beginning of the process, so that you may be able to gain access to any of the documents at any given time. It is especially noteworthy not to lose, destroy, or damage any key document necessary to the process.

The list for such applications is extensive. A qualified attorney will remit not only the payment schedule but the list of required documents which must be submitted in their original form along with a certified translation as needed. Such documents include, but are not limited to the investor's and his family's: birth certificates, passports, marriage certificate, divorce decrees where necessary, death certificates where applicable, source of funds details, path of funds details, health report, photographs, tax returns, and the like. We highly recommend the creation of a simple three ring binder with transparency pages called the 'Empowerment Binder' to ensure ease of tracking and recovery. You will also need a table of contents and indexing for the binder along with a photocopy of each document contained therein.

Along with your personal documentation, it is also a prerequisite in filing to attach a copy of the regional center approval notice and any other action which the agency has taken toward this regional center. Most regional centers are known to the reviewing officer however you must presume that they are unfamiliar with the project. A full set of documents related to the regional center will also be required.

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31 – Certified Translations

While many individuals may be fluent in the primary language of the immigrant investors, only those who are officially certified may act as official translators. Thus, this individual must be trained in translating legal documents and attaching their name and seal to the translation as evidence that it has been properly translated.

When releasing the original documents to U.S. government authorities, try to obtain a second set of documents as it is unlikely that the embassy, consulate or immigration office will return originals. The only original document assured to be returned is the passport. Therefore, it is useful to have this second set available for future use.

It is also recommended to have the translation performed by a globally recognized agency. While this is not a prerequisite, the content of the translation may be questioned if the translator is not obviously qualified, which may subsequently result in the entire file being delayed. Ensure that you retain copies or duplicate originals of all documents released to the processing attorney or the U.S. government.

≈ ≈ CHAPTER 32 ≈ ≈

32 – Government Filing Fees

There is a fee which relates to every application submitted by the immigrant investor. Normally, these fees can be determined ahead of schedule and provided in cost estimates. The rates assigned in the EB-5 category are significantly higher than other fees paid to the government as EB-5 investors are assumed to be more affluent and the extensive applications do, indeed, require greater attention when compared to less extensive applications.

Filing fees are not refundable even in the event of a denial of an application. Such fees are paid either by the attorney of record or directly by the investor in the exact amount. An error in the filing fee can cause a significant delay in the adjudication of the matter. It is therefore essential to ensure that the filing fee checks are drawn in the correct order, in the correct amount, and drawn on a US bank

NOTE that generally every stage of the residency process will generate some form of government cost application. The processing attorney will be able to formulate a reasonable cost estimate for the entire process, subject to future government fee changes.

≈ ≈ CHAPTER 33 ≈ ≈

33 – Collateral Professionals

While a qualified EB-5 attorney is always useful in the immigration process, the investor should also surround him or herself with other qualified professionals, such as a U.S. certified public accountant, banker, realtor, and any other professional which the investor deems helpful in developing an informed decision.

No decision should be made quickly as much of the documentation is prepared in legal language and will require the review of a corporate attorney specialized in this field of knowledge. Investigate before you invest. Once committed to the project it will be very difficult to retract your decision as the signed agreements are legally binding. Many of the investment periods can last for many years with no expectation of return of capital until completion of the project notwithstanding your residency situation. For this reason, it is always essential to contemplate the exit strategy as presented by the sponsor and verified by the appropriate professional(s).

All documents must be signed outside of the U.S. There can be no signatures on United States territory or within the territorial waters of the United States. Such a signature could violate the validity of the document and would be a violation of US securities laws.

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34 – Attorneys and Co-Counselors

Attorneys play a very important role in the EB-5 process. Although they are not required, attorneys typically file a regional center designation application. Additionally, attorneys are charged with the filing of I-526 applications for conditional residency and lifting of conditional residency through the I-829 process. In addition, their knowledgeable and experienced counsel may be essential in the consular processing phase of the investor's immigrant visa application.

While there may be a perceived conflict of interest between attorneys filing for the sponsor's application for regional center designation and an individual investor's conditional residency application, it is often that attorney who may be in the best position to counsel the investor once the regional center selection process has been completed. That attorney will know the ins and outs of the individual project. Additionally, you will likely be required to sign a waiver of conflict of interest disclaimer.

Ethical attorneys will always decline a representation if there is legitimate concern about conflicts of interest, whether real or perceived by any party. The interests of the client are always paramount.

Occasionally, a primary attorney will wish to refer or co-counsel with an EB-5 attorney in this sophisticated process. This is not unusual but does require an acknowledgement and acceptance by the investor client of both attorneys on the matter, and the signatures on two separate G-28 forms providing Notice of Entry of Attorney or Representative. Both attorneys will have to disclose their fee arrangements with the client and any potential conflicts which they may have, followed by a signed disclaimer agreement.

≈ ≈ CHAPTER 35 ≈ ≈

35 - Hiring Your U.S. Attorney

It is entirely normal for clients to inquire from any law firm how their legal fees are being expended. As clients do not have the opportunity or sometimes the experience in working with a lawyer in the United States, this chapter will outline the type of work which a law firm should accomplish on a daily basis on your behalf as related to your matter.

While some cases may differ from others, most integrate the following services which are performed on your case. As always, notwithstanding good intentions and hard work, results are always the key to any association. You should be comfortable in the knowledge that the law firm you engage only accepts matters which are reasonably acceptable under current immigration laws of the United States.

The following are some, but not all, of the services that a U.S. law firm may render as applicable to your matter:

• private consultation at initial meeting	• case evaluation and determination
• form preparation and photocopy	• file preparation and presentation
• telephone communications with client, consul, and administration	• follow-up meetings and organization
• paralegal preparation of file, coordination, and supervision	• administrative preparation with government agencies
• Consular precertification where applicable	• Legal research
• Passport verification	• Review of legal documents
• Assembly of evidence	• Corporate structuring where applicable
• File follow-up after closure	• Emergency on call service
• Accounts verification on call	• Family immigration planning and development
• Short-term and long-term immigration planning	• Instant fax and email access
• Website information	• Coordination with government agencies where necessary

<ul style="list-style-type: none"> • Communication with community leaders and contacts 	<ul style="list-style-type: none"> • Use of strategic alliances with specialist attorneys such as tax, patents and trademarks, real estate, or others
<ul style="list-style-type: none"> • Calendaring of visa expiration or eligibility for U.S. immigration benefits 	<ul style="list-style-type: none"> • Development and use of professional relationships worldwide
<ul style="list-style-type: none"> • Explanation of services and interaction in your mother tongue 	<ul style="list-style-type: none"> • File status report on call
<ul style="list-style-type: none"> • Acceptance of payment by check, all major credit cards, wire transfer, or cash 	<ul style="list-style-type: none"> • On-site travel for client assistance where necessary

In light of the services to be performed, it is evident that retaining a U.S. attorney to assist you with your immigration case is essential. You should be charged a reasonable fee according to the Fee Agreement for Legal Services.

≈ ≈ CHAPTER 36 ≈ ≈

36 – Source of Funds and Path of Funds

A key element of any submission for conditional residency is that the description and supporting documentation accompanying the petition must demonstrate the source of the funds and path of funds used in the investment structure. This is a long and tedious process which must be supported by extensive and clear documentation. A chart and narrative are usually recommended to facilitate the analysis for the reviewing officer.

The source of funds can be obtained from any lawful source, such as savings, an inheritance, a personal loan, a gift or sale of an asset, etc. There is no one strict source, however; whatever the source, it must be fully described.

The path of funds is equally important. This means that the flow of funds must be identified, lawful and documented, either from the investor's bank, promissory notes or wills. The path of funds will demonstrate from where the funds originated and how they ultimately arrived to the bank escrow account in the United States to be able to participate in the regional center, and as a result apply for conditional permanent residency

The hiring of a certified public accountant both in the applicant's home country and in the U.S. is highly recommended to ensure full compliance for USCIS purposes. All documents must be translated into the English language with a certification by the translator.

≈ ≈ CHAPTER 37 ≈ ≈

37 – Source and Path of Funds:

Wire Transfers

To be able to adequately demonstrate the source and path of funds, the investor must establish a working relationship with the bank in his home country. Proper arrangements must then be made for the transfer of lawful funds to the U.S. escrow account managed in conjunction with the regional center.

The issuing bank and the receiving bank should each remit a confirmation as to the flow of funds, and the account into which the funds have been deposited.

The cost associated with wire transfers vary from bank to bank. As such, it is important to understand the amount that your bank may be charging for this specialized service, so that the full amount of the investment expected by the regional center has been received.

Further, the delays in completion of wire transfers will also be different from country to country. You must allocate sufficient time between the order for the wire transfer and the receipt of such transfer, taking into consideration any conversion of currency which may be required.

Finally, although it is a long and an arduous process, we also recommend that the investor apply for and receive an individual tax identification number which normally can take approximately eight weeks to receive. Once a resident of the U.S., the investor and each family member will receive a social security number which is valid for life.

≈ ≈ CHAPTER 38 ≈ ≈

38 – Escrow or Trust Accounts

In a typical regional center structure, the investor will have to conclude two wire transfers to the U.S. bank which acts as the escrow agent. The first transfer is related to the legal fees and administrative costs associated with the investor's representation. These initial fees are with regard to the immigration service, as well as the administrative costs associated with the compliance and regulatory work, which is necessary for the legal continuation and good governance of the regional center. Normally, these funds are placed at risk and are not refundable.

Once the securities documents have been reviewed and signed, the investor will wire transfer the investment amount to a separate project investment account, at the same escrow bank named by the regional center. By written agreement, this bank has been instructed not to release the investment amount to the sponsor until such time as the application for the conditional residency (the I-526) has been approved. It is only upon the realization of that event that the investment amount is released to the sponsor.

NOTE that after the investment funds have been released, the investor must still complete the immigration process by concluding consular processing or adjustment of status.

≈ ≈ CHAPTER 39 ≈ ≈

39 – Conditional Residency: The I-526

An application for immigrant investor status is conducted through the completion and filing of a form called an I-526, Immigrant Petition by Alien Entrepreneur. Included in this filing are: extensive documentation recognizing the regional center or other commercial investment, the form I-526, and supporting documents, which are then submitted to the USCIS for review.

After submission of the file, three possible results may occur. Should the petition be *approved*, the investor and his family can then progress with filing with the embassy or consulate in their home country or with filing an adjustment of status if they are lawfully in the United States. If the application is *questionable*, the USCIS may issue a Request for Further Evidence (RFE) in which the investor will be required to submit further explanations and either an approval or a denial of the application will be issued. If the application is patently erroneous, it may be *denied* from the beginning.

Conditional residency, following consular proceedings or adjustment proceedings in the U.S., confers a two year conditional residency on the investor and the investor's family. We like to say that it is akin to 'marrying' the USA and seeing if the parties like each other!

NOTE that the key to the lifting of the conditional residency will be the regional center sponsor job creation program which will demonstrate and prove the creation of ten direct and indirect employment positions filled by US employees.

≈ ≈ CHAPTER 40 ≈ ≈

40 – Obtaining a Temporary Visa

Many prospective investors require a temporary non-immigrant visa to be able to come to the United States for an on-site inspection of the regional center. This application is customarily made in the home country of the applicant. In such, the applicant must demonstrate strong ties to the home country such as an ongoing job or personal and financial commitments in the home country.

It is also highly recommended that an itinerary be prepared and submitted at the same time the application is being made for the visitor visa. Individuals seeking to come to the United States primarily for business purposes will apply for a business visa which describes the type of activity, and the duration for which the individual is coming to the United States. Adequate financial arrangements in the form of expenses must be arranged prior to the issuance of a visa.

Regional centers are accustomed to issuing letters of invitation to prospective investors, as long as they are pre-qualified. The denial of an application for a temporary visa may require a new submission with greater information six months later.

≈ ≈ CHAPTER 41 ≈ ≈

41 – Lifting of the Conditional Status: The I-829

Prior to the end of the two year conditional residency period, the investor must submit a form I-829 for the lifting of the conditional status. The primary purpose of this petition is to demonstrate that the requisite ten jobs have been created, both directly and indirectly.

NOTE that this initial two year period will count toward the five year residency period necessary for U.S. citizenship, should the bona fide residency requirements be met. Thus, it is essential that new investors ensure that they remain in the U.S. no less than six months per year in order to ultimately qualify for citizenship and to prevent re-entry problems at the border. It is highly recommended to maintain a log of entries and exits from the U.S.

The lifting of the conditional status will not require further evidence of source of funds. Rather, it will be necessary to demonstrate that the proposed project is either under development or is imminent. The government, in its review, does maintain some flexibility in this regard.

The decision to approve or deny an I-829 application may take several months. During this time, the investor will be deemed to be in status, so long as the application for lifting is submitted between the 21st and 24th month, after issuance of the initial conditional residency. It is essential that a receipt from USCIS is received prior to the expiration date to ensure a timely filing.

≈ ≈ CHAPTER 42 ≈ ≈

42 -Employment in the US: Work Permits

The EB-5 program confers U.S. residency upon those fortunate enough to attain approval. Along with U.S. residency, the investor, his or her spouse, and working age children will be allowed to receive work status approval. Initially, such approval will derive from an Employment Authorization Document (EAD), and thereafter through the resident alien card, also entitled an I-551.

U.S. immigration has many work permit structures available, none of which are more flexible or extensive than those granted via residency benefits. Remember: EB-5 status confers U.S. permanent residency; other work permits are deemed temporary or nonimmigrant. The work benefit is automatically conferred on a green card holder. No further application is necessary.

When filing for an adjustment of status, the beneficiaries may wish to apply for an early employment authorization document prior to the final adjudication for conditional residency. This is called an EAD and normally has a maximum duration of one year.

Work and travel privileges for those applying for the lifting of conditional residency are normally extended automatically with the filing of the I-829 application.

≈ ≈ CHAPTER 43 ≈ ≈

43 – Tax Issues

It is highly recommended that any applicant seek a qualified tax counsel, conversant in U.S. tax laws to organize their affairs, prior to applying for conditional residency status.

U.S. income taxes are imposed on a world-wide basis and extend to include estate taxes, gift taxes, and of course normal sales and real estate taxes. So long as an individual has remained in the U.S. for a minimum of six months, he or she may be deemed to be a U.S. resident for tax purposes.

Many foreign investors have avoided paying taxes in their home country. However, this will not be the case in the United States. All U.S. residents, citizens, and those eligible to pay taxes will have to pay their stated fair share of the tax burden, enforcement of which is strictly adhered to.

It is for these reasons that qualified U.S. tax counsel be retained as early as possible in the process to ensure the greatest tax flexibility in the planning stage and for future compliance by the taxpayer. Any income derived from participation in the regional center, whether on a profit or paid out basis, may be subject to U.S. income tax or withholding.

≈ ≈ CHAPTER 44 ≈ ≈

44 – Residing in the United States

Some approved EB-5 investors are under the false notion that possessing the residency card or the I-551 is sufficient to demonstrate residency in the U.S. This is not accurate.

To maintain residency in the U.S., the investor, or any member of his or her family, must physically reside in the U.S. for no less than six months in total in a calendar year. This does not mean that it must be continuous, but it does mean that it must be cumulative.

Many EB-5 investors maintain businesses in their home country. This is understandable and in our global society perhaps even desirable. However, arrangements must be made to ensure the continuation of the enterprise without the investor, when the presence of the investor is necessary in the U.S. for 180 days or more per year.

We highly recommend keeping a log, or history, of each entry and exit to and from the U.S. while the investor is merely a conditional or full resident of the U.S. Do not rely on the USCIS computer systems to provide valuable evidence of your departures or entries to the U.S. Only a filing under the Freedom of Information Act, or “FOIA”, will require the government to release full immigration documentation which the government preserves in its records. Only information which is not classified will then be released to the applicant.

You may be found to have abandoned your permanent resident status if you:

- ❖ Move to another country intending to live there permanently;
- ❖ Remain outside of the U.S. for more than 1 year without obtaining a reentry permit or returning resident visa. However, in determining whether your status has been abandoned, any length of absence from the U.S. may be considered, even if less than 1 year;
- ❖ Remain outside of the U.S. for more than 2 years after issuance of a reentry permit without obtaining a returning resident visa. However, in determining whether your status has been abandoned, any length of absence from the U.S. may be considered, even if less than 1 year;

- ❖ Fail to file income tax returns while living outside of the U.S. for any period;
- ❖ Declare yourself a “non-immigrant” on your tax returns.

≈ ≈ CHAPTER 45 ≈ ≈

45 – Border Crossings

There are two types of border crossings which are of focus at this time. The first involves the initial border crossing after approval for residency abroad at the U.S. embassy. The second is the border crossing when returning to the U.S. from a trip abroad while a resident of the United States.

As to the initial border crossing, at the final interview, the consul will approve the application for residency and hand the investor a precious sealed envelope with the approval notice. Along with the investor's immediate family, the sealed envelope must be presented to any Department of Homeland Security official at any approved port of entry such as at an international airport, seaport, or land post within four months of the interview.

The immigration officer will open the envelope, assess its authenticity and then stamp the passports of the entrants with a red I-551 stamp to demonstrate lawful entry into the U.S. The actual residency cards will be received in the mail approximately three months thereafter, as they will be ordered to be manufactured, however the stamp will be valid for one year.

The second entry concerns those investors who have become residents of the U.S., however are either away for long periods of time or experience high frequencies of absence. For individuals who fall into this category, it is essential that they carry an up to date binder with documents which demonstrate that they intend to remain residents of the United States. Such documents include U.S. tax returns, real estate tax bills, current credit card charges, evidence of family continually living in the U.S., etc. This 'empowerment binder' will allow the officer to review the residency in a better light with regard to the intent of the green card holder to remain a resident of the U.S. Each investor should ensure that he or she retain a valid passport and a return airline ticket to the U.S.

≈ ≈ CHAPTER 46 ≈ ≈

46 – Consular Processing

Once the I-526 application is approved, many applicants will elect to finalize their applications through the U.S. embassy or consulate in their home countries. This is done for purposes of ease so as not to displace any family members needlessly before their time.

The I-526 approval, issued by USCIS in California, is directed to the National Visa Center in New Hampshire. A file is then created denoting the city where the ultimate process will take place at the U.S. Embassy or Consulate in the home country of the applicant. The forms are then directed to the applicant, with a notice to the consul to open a matter in their embassy or consulate.

Once the appropriate documentation has been submitted by the Investor to the National Visa Center, a notice is sent to the consulate or embassy to schedule the applicant for a final interview to ensure that he or she and all members of the family remain eligible. It is unfortunate when any member of the family does not qualify for residency due to personal reasons, and the remaining members of the family are eligible to depart without that family member.

NOTE that the spouse and minor children are entirely dependent on the principal investor to allow them to also become U.S. residents.

≈ ≈ CHAPTER 47 ≈ ≈

47 – Adjustment of Status

Some EB-5 investors who are in lawful non-immigrant status will elect to remain in the United States and conclude their process while there. As such, along with the approval of the I-526, the investor will file the adjustment of status, an application for work authorization, and an advanced parole application to allow for foreign travel, while the case is pending with USCIS for six month duration. This process is repeated simultaneously for the investor's dependents.

An adjustment of status may culminate in an interview at the USCIS office where the investor non-immigrant is residing. Occasionally, there may not be an interview. Nonetheless, the investor will receive a Welcome Notice by mail assuring the investor that he or she has been approved. NOTE that individual 'welcome' letters are sent to each and every family member including the minor dependents as a separate file, known as an "A" or 'alien' file, will have been created for the life of the applicant. This number will follow the applicant in each phase of their immigration life in the U.S., progressing from conditional residency, to full residency, and ultimately citizenship.

In matters where the family may be separated due to circumstances, the principal investor must first be conferred with conditional residency. The dependents may then apply as 'follow to join' relatives. Although this process can be accomplished in the consulate or embassy in the home country, it is a long and tedious process to follow.

≈ ≈ CHAPTER 48 ≈ ≈

48-Receiving Your Green Card in the Mail

Once approved for U.S. conditional or full residency, the prospective resident will receive, at the home address listed in the U.S., the actual I-551 residency card. The “green card,” which is now white, will be sent via regular mail. The residency card(s) may also be mailed to the attorney’s office if so directed.

This chapter is of great importance in that numerous administrative errors may still arise in the delivery of the card itself. It is imperative that investors be aware of such potential errors. To begin with, the actual manufacturing facility may have a delay or breakdown in production. As such, the I-551 stamp on the passport becomes critical for work and travel purposes and acts as temporary evidence of permission of such.

Second, the U.S. postal service will simply mail the card to the recipient without regard to whether the investor is home or will receive the card in the regular mail. There is no evidence of receipt of the card or its mailing. Therefore, those who will be away for extended periods of time must ensure that someone is watching the mailbox, looking out for the brown envelope containing the green card. It is normally very nondescript and can be confused with other mail.

Third, there is a distinct possibility that the presiding officer failed to order the residency even though residency was approved and conferred at the interview overseas or in the US. For such situations, contact the Customer Service line in order to determine the source of the error and have it corrected. Do not rely on the U.S. postal service for delivery of this coveted card.

≈ ≈ CHAPTER 49 ≈ ≈

49 – Full Disclosure: Criminal History of the Investor

A regional center will request personal information about the investor on both the investor accreditation evaluation form and an extensive questionnaire which the investor, the investor's spouse, and the investor's children will be required to complete. The information acquired will be used to assess if there are any reasons for inadmissibility of the applicant, or any member of his or her immediate family.

Examples of grounds for inadmissibility are such things as, commitments of felonies, and membership in organizations which persecuted individuals on the basis of race, creed, or color. Financial shortcomings, such as a bankruptcy, are normally not a barrier to residency, unless fraud was involved in the process. An applicant's net worth must also be taken into consideration when determining admissibility.

In the event that the investor applicant does have a criminal record of concern, it is recommended that a specialized attorney in the United States, and in the home country of the applicant, be retained for the purpose of assessing the prospects of ultimate success in this application.

Prior to the submission of any application, the applicant will wish to have any criminal record reviewed and possibly file a waiver application to have the matter considered by the USCIS.

NOTE that this review will lengthen the overall application time considerably.

≈ ≈ CHAPTER 50 ≈ ≈

50 – Agents and Finders

Many investors, who gain lawful residency status in the U.S., have done so through the efforts of an agent, finder, or migration agency. While helpful in identifying prospective investors to the process, these individuals or companies are not trained in the details of EB-5 law. Their role must be understood to be very limited; acting strictly as an intermediary but not as counsel. Such intermediaries are not bound by the same rules of professional conduct as attorneys or certified public accountants.

Under this understanding, it is essential that any transaction entered into with an agent needs to be with a licensed migration agency. It is important that the migration agency has posted a bond to ensure that the investment will not default.

Agents, finders, and agencies are paid a fee from the regional center for assisting and marketing their regional center where lawful. You are entitled to know the amount of such a fee.

Some states require, at the very least, that you be aware of the potential conflicts of interests and sign disclaimers to that effect. Be sure to read all documents before signing, and ensure that they are in a language you can understand.

**EMPLOYMENT BASED
FIFTH PREFERENCE
(EB-5)**



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**IMMIGRATION
FLORIDA AND EB-5**

Operating since October 1979, the Law Offices of Larry J. Behar, P.A., provides multi-faceted legal services to the growing international community. Located in downtown Fort Lauderdale, with multilingual capacities in English, French, and Spanish, the firm is able to cater to a wide array of clientele, primarily dealing with complex issues in immigration. The firm also engages interpreters in every language.

Since the inception of the EB-5 program in 1990, our firm has been involved and has become a key player in the field. Currently, we represent or are in the process of representing half a dozen regional centers across the United States.

In order to achieve permanent residency for our clients, we have an active EB-5 team who are exclusively dedicated to the creation and administration of EB-5 Regional Centers and Investors. Our team includes the following specialties: immigration, legal, securities, economic planning, finance director, marketing, CPAs, business consultants, and bankers.

EB-5 OVERVIEW

The EB-5 program for lawful permanent residence is currently administered by the USCIS. The program has concurrent goals of immigration to the U.S. through qualified investment into a commercial enterprise, and job creation for U.S. citizens or lawful residents.

Investors receive conditional residency after taking the risk in a qualified investment of their own creation or as part of a partnership or limited liability company in a regional center. After two years of receiving such status, the investor may apply for a removal of the conditional status at which time it must be shown that 10 qualifying job positions per investor have been created, some direct - some indirect.

The required investment level is \$1,000,000.00, unless the investment is made into a business located in a targeted employment area, such as a rural or high unemployment region, at which time a reduced investment of \$500,000.00 USD is required.

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REGIONAL CENTER DESIGNATION

A separate EB-5 program was implemented by Congress in 1993, allowing foreign investors to invest in designated regional centers. Of the 10,000 investor visas that are available annually, 3,000 are reserved for those who apply under the regional center program.

Investing in a regional center provides additional flexibility through the acceptance of indirect job creation as part of the job requirements.

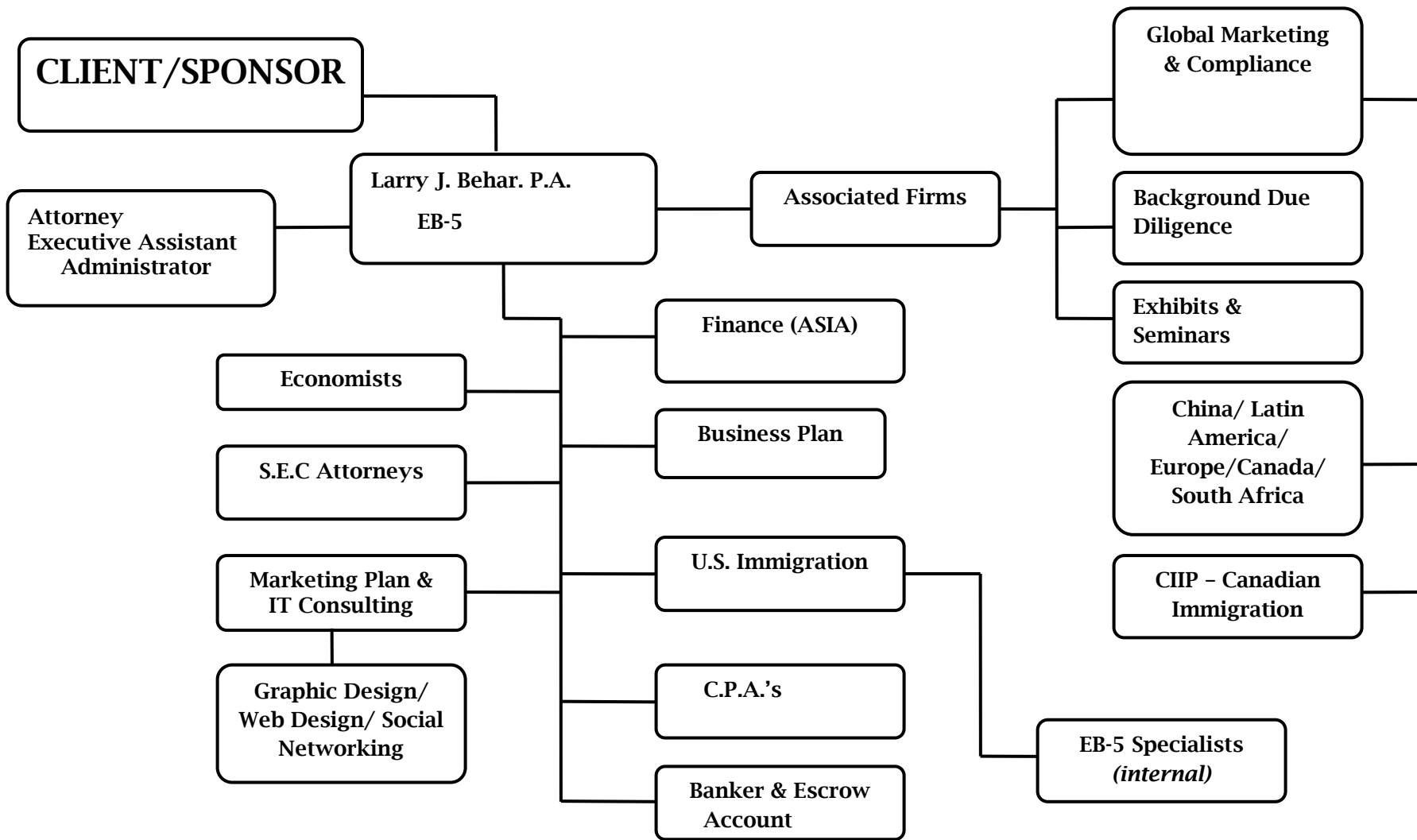
Private and governmental agencies may apply to the USCIS in order to be designated as a regional center.

EB-5 REQUIREMENTS

In order for an immigrant investor to receive his/her green card through the EB-5 program, it must be clearly established that the requisite requirements have been met.

1. A new commercial enterprise has been established.
2. The requisite amount has been invested into the commercial enterprise.
 - ❖ A minimum of \$1 million dollar investment, unless you invest in a rural or high unemployment area which decreases the minimum investment to \$500,000.
3. The immigrant investor has demonstrated that the capital investment funds have been obtained legally.
4. The requisite number of jobs have been created.
 - ❖ A minimum of 10 full-time employment positions must be established per immigrant investor.
 - ❖ Under Regional Center designation, 10 direct or indirect jobs must be created per immigrant investor.
5. The immigrant investor has actively participated in the business.
6. Where applicable, employment opportunities have been created within a targeted employment area

Appendix 1: Regional Center Staff



Appendix 2: Employment Based Fifth Preference

The US employment based fifth preference for lawful permanent residency was created in 1990 and is currently administered by the USCIS.

The program annually sets aside 10,000 permanent residency (green cards) for immigrants who make a qualified investment into a new commercial enterprise which will create no less than ten qualifying full time employment positions for US citizens or residents per investor.

Investors receive a conditional residency after taking the risk in a qualified investment of their own creation or as part of a partnership or limited liability company in a regional center. The investor may then apply for a removal of the conditional status two years after receiving such status at which time it must be shown that the ten qualifying positions have been created.

The required investment level is \$1,000,000 USD, unless the investment is made into a business located in a targeted employment area (TEA, i.e. rural area of city populations with less than 20,000 persons) at which time a reduced investment of \$500,000 USD is required. The targeted area may encompass a city, town, county, or parts thereof, or even an entire state.

The petition for residency is submitted to the USCIS at the service center by detailing the source of funds being invested, the establishment of the new commercial enterprise, that the capital is at risk, that a minimum of ten jobs will thusly be created, and that the investor will be involved in the management of the enterprise to a degree.

A 'new' business may be defined as the creation of an entirely new enterprise, the purchase of an existing business with the job creation component with the simultaneous restructuring of the business and expansion via investment of the required capital so that there is a substantial increase (40% or more) in net worth where employees all count as new within the commercial enterprise.

A 'qualifying' employee is a US citizen or other lawfully admitted permanent resident excluding the investor immigrant and must be engaged in full time employment or a minimum of 35 hours per week.

If there is a loan to the enterprise, it must be constitute a risk in that it cannot be returned but for the success of the enterprise.

Most applications take about six months to review with an additional six months or more to finalize consular processing or adjustment of status.

Appendix 3: EB-5 Frequently Asked Questions

Section 1: EB-5 Visa General Information

1. How many immigrant visas are allotted for this classification?

The EB-5 program allots 10,000 visas per year for aliens and family members whose qualifying investments result in the creation or preservation of at least ten (10) full-time jobs for U.S. workers. **3,000 immigrant visas are set-aside for aliens who invest in designated regional centers**, areas of high unemployment or other qualifying areas.

2. What is the history of the EB-5 visa category?

The EB-5 visa category started in 1990, whereas the development of Regional Centers began in 1993. During the mid 1990-'s several companies competed for investment capital from foreign investors for the EB-5 program. Most of the companies did not offer sound investment opportunities and did not raise the full one million dollar investment capital or hire the required number of employees.

The INS wanted to stop these abuses of the program, which involved law suits. The EB-5 program was effectively placed on hold between 1998 and 2002. In 2002, Congress passed a new law to protect the pre-1998 investors. Also, in a case commonly known as "Chang" in the 9th Circuit Court of Appeals ruled that INS may not apply their new rules retroactively. In August of 2003, INS began approving regional center petitions for the first time since 1998.

It is now common knowledge that EB-5 immigration petitions based on sound investments in designated regional centers for the full investment amount as prescribed by the rules, with the proper supporting documentation, should be approved.

3. What are some of the benefits of the EB-5 visa program?

- Qualifying investors and their spouse and unmarried minor children (under 21) will be granted US Lawful Permanent Residency
- No minimum requirements as to age, to speak English, employment experience, or education
- Investor and family may live/work anywhere in the United States. Minor children may obtain employment, subject to age, state and governmental laws and regulations.
- Education benefits including admission to Universities at US resident costs.
- The EB-5 program does not require immigrant investors to manage their investment on a day to day basis.
- After five years, the investor and their family may obtain US citizenship, subject to meeting all immigration requirements, as required under law.

4. Is EB-5 a truly passive investment?

The EB-5 regulations require involvement in management or policy making. The regulations deem a limited liability corporation, which is properly structured and that conforms to the Corporations Act as sufficiently engaged in the EB-5 enterprise.

5. Where can I find a copy of the relevant EB-5 law and regulations to review?

Please go to the US Bureau of Citizenship and Immigration Services website. A link to immigrant investment visa information is available at:

<http://www.uscis.gov/portal/site/uscis>

6. I want to invest in the USA and get a green card, is the EB-5 visa suitable for me?

The EB-5 visa permits employment in the US for the investor and their family. Quite simply, the EB-5 visa gives you the opportunity and flexibility to do what you want in the USA. If you do not want to actively manage your business, you should consider a regional center EB-5 investment.

7. What if I want to manage my own business?

If you want to manage your own business, consider an L-1 (Non-Immigrant Intra-company Transferee), E-2 Visa (Non-Immigrant Treaty Investor), or EB-5 Alien Entrepreneur Investment by investing \$1,000,000.00 into your own business which you control, and create the necessary 10 new jobs within a new enterprise. If your goal is to have a Green Card and not to actively manage a business, it is maybe less expensive to utilize a structured investment program in the Regional Center EB-5 category rather than to start and maintain your own business.

Section 2: EB-5 Visa Immigration Matters

1. Must I have previous business experience or education?

The investor is not required to have any prior business experience. Likewise, the investor is not required to demonstrate any minimum level of education. The only requirement for the investor is that he/she has the required net worth and capital. (Accreditations)

2. Must I speak English?

No. However, do try to learn English as it will help in an immigration interview.

3. Must I be in good health?

Yes. You must have no communicable diseases and proper vaccinations.

4. What are the benefits of the green card?

- All legal permanent residents under the EB-5 Investor Program enjoy the same benefits as every other United States resident.
- The U.S. is a safe harbor for your family as well as your personal and business investments. Any member of the family with a “green card” can enter the U.S. at any time and stay as long as he/she wishes respecting residency requirements.

- Investors have constant and easy access to the United States for personal, trade and business purposes.
- Permanent residents travel to the U.S. without the need of a visa. Investors may work, live, or own their own proprietary business *anywhere* in the United States.
- The U.S. has internationally recognized colleges and universities for both basic education and graduate study. As a resident, the investor can benefit from lower tuition costs.
- The cost of living in the U.S. is less than most large industrial nations. Consumer goods, services, and housing are significantly less expensive than comparable services and good in most other countries.
- Students may work in the U.S. while they attend college and then continue to work afterwards, enabling the student to pay part of his education and to work while attending graduate and postgraduate studies.
- The U.S. provides many financial, social and education entitlements such as public schools, health and medical attention, social security, and education.
- The Investor has the ability to bring immediate family members to the U.S. right away and, after proper application, can obtain U.S. citizenship after 5 years.
- The unrestricted permanent residency requires no renewal or re-application. Other U.S. non-immigrant visas, such as E-2 and H may never result in permanent residency, have time limits, and require additional filing with USCIS or the Department of State. Furthermore, U.S. immigration laws may change and prevent future approval when a renewal of visa is required.

5. What is meant by the requirement that the investor’s assets be “lawfully gained”?

Under USCIS regulations, the investor must demonstrate that his assets were gained in a lawful manner. This requires the investor to prove his investment funds were obtained through lawful business, salary, investments, property sales, inheritance, gift, loan or other lawful means.

6. Can money gifted by a parent or other relative be used for an EB-5 Investment?

Yes, provided that any applicable gift taxes are paid. It must be demonstrated that the gift is an actual arms length transaction and is not a mere ruse that the gifted funds will be given back after permanent resident status is granted.

7. What is the difference between “conditional” and “unconditional” green cards?

Under the regulations, an investor who is approved for the EB-5 immigrant visa receives a “conditional” green card, which must be reissued after two years, subject to removal of conditions. Otherwise, the two cards offer the same rights and privileges.

8. What is a ‘Conditional’ Green Card?

A conditional Green Card is a temporary Green Card valid for two years. One year and nine months after it is issued, a three-month window opens up during which an individual must file another application (I-829) with the CIS to verify that all of the funds have been invested and employment created, in a regional center whether directly or

indirectly. When the conditional resident status has been lifted, full resident status is granted and a permanent Green Card is issued.

9. If my I-526 petition is approved by USCIS, what is the purpose of the Consulate application and interview, and how soon do I get my “Green Card”?

Upon approval of I-526 Petition, you must wait for notification from the US Consulate in your home country to prepare documents for the Visa interview. The purpose of this procedure is to ensure that the investor and his/her family undergo medical, police, security and immigration history checks before the conditional permanent resident visa are issued. At the interview, the consular officer may address these issues and information printed on the I-526 application, including asking the investor to summarize the nature of his/her immigrant investment. If the investor and his/her family are in the United States, then you may apply for adjustment of status by filing form I-485, and supporting documents, the application may be filed at the appropriate office of the USCIS.

10. Can I apply for an EB-5 if I have been rejected or terminated in the past by USCIS for an L-1, E-2, B, or other visas?

Rejection in the past does not disqualify the applicant, unless the reasons related to immigration fraud or other major problems. It is most important that all criminal, medical, or U.S. immigration history problems be disclosed to the limited partnership and legal counsel in advance of application.

11. After petition approval, can members of the family interview in different countries?

Family members can interview in different countries. The country of origin or where the family has current ties is the standard interview site. Often one member of the family is located in another country, such as a student attending school in the U.S. The student does not have to return to the country of origin and can adjust status in the United States at the district office of the USCIS.

12. Who receives the permanent residency (“green card”)?

Husband, wife and any unmarried children under the age of 21. It is possible for adopted children to be included in the family. Upon approval you will receive a form evidencing approval and a travel document. You should also receive a temporary green card in the mail.

13. What issue has caused the most problem when applying for an EB-5 visa?

The most common problem area has been insufficient documentation of the source of funds. Many people try to disclose the least possible information only to have the file returned with a request for further information. It is better to provide too much information rather than too little information. USCIS case examiners require a well-documented source of funds application. Professional assistance from a certified public accountant or tax attorney is recommended.

14. How long must I remain in the United States each year?

The first requirement of any investor after they receive the visa at the United States overseas consular office is to enter into the United States within 180 days of visa issuance from the consulate. The investor must then establish residency in the United States. Evidence of intent to reside includes opening bank accounts, obtaining a driver's license or social security number, paying state and federal income taxes, renting or buying a home.

There are a few exceptions to the 180-day rule such as students studying abroad, medical circumstances or emergency business circumstances. The 180 days need not be consecutive. You may travel in and out of the country. Proper preparation for re-entry into the US is highly recommend *prior* to leaving.

The 180-day rule is in effect until you get citizenship in 5 years. It is still in effect when you get conditional residency and a green card.

The United States resident may work overseas if required based upon the nature of the business or profession. However, all permanent residents must remain in the US for more than 6 months each year, or they may be deemed to have abandoned their permanent residence status.

15. What is the difference between permanent residency and citizenship?

Once you obtain a green card, and become a legal permanent resident, you have most of the rights and obligations of U.S. citizens, except that you cannot vote and you are not entitled to some public benefits. You are subject to the same tax filing requirements and entitled to the same tax rates and deductions as U.S. citizens.

Your 'green card' is your most important travel and identification document. When your green card arrives, look at it carefully. You may need to extend it in 10 years. If you replace it before then because it is lost, stolen, or duplicated, you may file a form with the USCIS.

"Abandonment of residency" rules are an important restriction to which legal permanent residents are subject. Abandonment can occur when you are outside of the United States for more than six months without informing the USCIS of your plans in advance. The law provides that you are free to travel abroad, provided that your trip is "temporary". Generally, the USCIS views any absence from the United States for longer than six months as not temporary. Thus, it is advisable to obtain a "re-entry permit" before your departure.

One of the most important rights legal permanent residents possess is the right to obtain U.S. citizenship after five years. There are two ways to become a U.S. citizen. One is by being born in the U.S. The other way is by naturalization. The first step in becoming a U.S. citizen through naturalization is to become a Legal Permanent Resident (LPR). Being a LPR for 5 years is one of the basic requirements for qualifying for naturalization. A second requirement is being physically present in the U.S. for 30 months during the 5 years prior to the naturalization application. Once becoming a U.S. citizen, an individual is entitled to benefits including the right to vote and hold public office.

16. Can my Green card be taken away from me? How to keep Your Green Card After You Get It!

Once you receive a green card, there are only two conditions required to keep it for life. First, you must not become removable or inadmissible. The most common way of doing this is to be convicted of a serious crime.

The second requirement is that you not abandon the United States as your permanent residence. As long as you are not planning to make your home somewhere else, then legally you are still a resident of the United States. Problems may arise, however, because the USCIS will try to judge your intention by the way you act.

“Abandonment of residency” rules are an important restriction to which legal permanent residents are subject. Abandonment can occur when you are outside of the United States for more than six months without informing the USCIS of your plans in advance. The law provides that you are free to travel abroad, providing that your trip is “temporary”. Generally, the USCIS views any absence from the United States for longer than six months as not temporary. Thus, it is advisable to obtain a “re-entry permit” before your departure.

As a general rule, if you have a green card and leave the United States for more than one year, you may have a difficult time re-entering the country. That is because the USCIS feels an absence of longer than one year indicates a possible abandonment of U.S. residence. Even if you do not return before year is up, you may run into trouble. To avoid a full-scale inspection, you should return within six months.

It is a common misconception that to keep your green card all you need to do is enter the United States at least once a year. The fact that if you ever leave with the intention of making some other country your permanent home, you give up your U.S. residency when you go. Once again, the USCIS will look to your behavior for signals that your real place of residence is not the United States.

On the other hand, remaining outside the United States for more than one year does not mean you have automatically given up your green card, if your absence was intended from the start to be only temporary, you may still keep your permanent resident status. However, you may no longer use your green card as a U.S. entry document. You must either apply at a U.S. consulate for a special immigrant visa as a returning resident or you must get what is known as a reentry permit.

17. I have a Green Card and plan on traveling out of the U.S. for a long time. Can I keep my Green Card?

Perhaps. The primary rule surrounding Green Cards is that *you lose it if you give up your U.S. residence*.

The more common criterion, though, is time based. There are three important time limits to know about:

- If you are absent for less than six months, you will rarely have a problem. It is up to USCIS to prove that you abandoned your residency. Absent that, you are considered to never really have left.
- If you are absent for more than six months but less than a year, the burden of proof reverses. It becomes your job to prove that you are still a permanent resident. This is based on the concept that after six months you have to be readmitted and have to prove that you are still admissible. As a side note, after an absence of more than six

months, the various criteria for admissibility apply again too. For instance, if you in the meantime had become inadmissible, say through an HIV infection, you might have a problem.

- If you are absent for more than a year, your Green Card will be considered almost automatically abandoned. Once that happened, there is usually no recourse. However, if by chance the immigration officer did not ask you how long you have been out of the U.S. when you return, then you may be in luck and able to keep your Green Card after all. You should in this case not leave the US for a very long time, and make it your bona fide residence again.

18. I need to travel out of the U.S. for more than a year. Is there anything I can do?

You can apply for a reentry permit (on form I-131) before you leave the U.S. You can depart before the reentry permit is approved. Note that waiting time may be six months or longer for issuance.

With such a reentry permit, you can return to the U.S. even after one year until the reentry permit's expiration date. Reentry permits are issued for two years. You cannot renew a reentry permit, but you can return to the U.S. for a short time and apply for a new one. The second such reentry permit will be granted for two years ago, but subsequent ones may only be approved for one year at a time.

19. How long is a Green Card valid for?

There are several answers to this question.

If you received your Green Card through marriage, and have not been married for two years when you go your Green Card, you should have a conditional Green Card that is good for two years. Also, if you received your Green Card through investment (EB-5); you should have a conditional Green Card for two years.

You must apply for removal of the conditional within 90 days before the two years are up. Once that is approved, you have a regular unconditional Green Card. If you apply either too early or too late, you will have a problem and should consult with an immigration attorney for advice.

If you do not have the condition removed, the Green Card will become invalid at the end of two years, and your permanent resident status will be terminated.

Unconditional Green Cards are valid for ten years. This does not mean that after ten years, you stop being a legal permanent resident - only the card itself becomes invalid. You must apply for a new one using form I-90. Without a current Green Card, you cannot use the Green Card to travel out of the U.S. and you also can not use the Green Card as evidence that you are permitted to work.

20. Are any countries excluded from eligibility for the EB-5 Visa program?

Residents of only a few countries are excluded (e.g. Iran and Iraq). In most cases, however, if the applicant is able to leave the excluded country and has the necessary capital to qualify under the program, legal counsel will be able to help the applicant qualify for the visa approval.

21. What is an ‘escrow’ account, and when does the investor transfer the money to this account?

An Escrow Bank Account is a legal, interest-bearing account established in a registered bank to hold the initial deposit in the trust until the completion of visa processing. This type of account is commonly used in the sales of real estate, businesses and personal property. The Investment Visa Program has established an Escrow Account for the purpose of safely holding an investor’s funds at a leading bank in the United States. Under the agreements entered into with the servicing affiliate, the investor’s investment money is not authorized to be released from the Escrow Bank Account by the bank until the visa I-526 Petition has been approved. This process was created to protect the investor.

22. How does the bank “escrow” account protect me against the risk of losing my money?

The initial cash deposit from the investor is placed in a legal, interest-bearing Escrow Bank Account. When an Escrow Bank Account is established, the funds continue to belong to the investor; however, they are committed to be placed into the investment upon petition approval. The attorney or bank has an agreement with the investor that requires the funds to be released from the account only when the petition is approved by the USCIS.

23. Can I apply if I am currently without a valid visa?

Out-of-status nationals are no longer permitted to apply for permanent residency from within the United States. They must first return to their country of origin and apply through the United States Embassy there. Examples of “out-of-status” individuals are students, tourists, E-2 treaty investors who no longer have valid visas because they remained in the United States after their visas expired or were revoked. Use extreme caution.

24. What is a Designated Regional Center?

A “Regional Center”

- Is an entity, organization or agency that has been approved as such by the Service;
- Focuses on a specific geographic area within the United States; and
- Seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.

25. Am I entitled to keep my citizenship from my country of origin?

Maybe. The U.S. *allows* dual citizenship, but your original country of origin may not allow it. You will need to investigate this.

Section 3: How do I apply for the EB-5 program?

The program *only has a limited number of investor positions*. Priority will be given to qualifying investors as determined by the Managing Members in the order that their respective deposits are received.

Deposits will be returned in the event of oversubscription or at the request of an investor pursuant to the Investor Escrow Agreement. The Bank Escrow Agreement will release funds pursuant to the escrow agreement to the Limited Liability Corporation upon the approval of an investor's immigration petition application and to the investor in the event an investor's immigration petition application is denied.

Section 4: Glossary of Terms

Abandonment of Residency

Abandonment can occur when you are outside of the United States for more than six months without informing the USCIS of your plans in advance. The law provides that you are free to travel abroad, provided that your trip is "temporary". Generally, the USCIS views any absence from the United States for longer than six months as not temporary. Thus, it is advisable to obtain a "re-entry permit" before your departure.

Conditional Green Card

A conditional Green Card is a temporary Green Card valid for two years. One year and nine months after it is issued, a three-month window opens up during which an individual must file another application (I-829) with the CIS to verify that all of the funds have been invested and employment created, in a regional center whether directly or indirectly. When the conditional resident status has been lifted, full resident status is granted and a permanent Green Card is issued.

Designated Regional Center

This is an entity, organization or agency that has been approved as such by the United States Government. It Focuses on a specific geographic area within the United States and seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.

EB-5 Visa Program

The EB-5 Visa Program is an employment based immigration program that allots 10,000 visas per year for aliens and family members whose qualifying investments result in the creation or preservation of at least ten (10) full-time jobs for U.S. workers. 3,000 immigrant visas are set-aside for aliens who invest in designated regional centers, areas of high unemployment or other qualifying areas.

Escrow or Trust Account

An Escrow Bank Account is a legal account established in a registered bank to hold the initial deposit in the trust until the completion of visa processing. This type of account is commonly used in the sales of real estate, businesses and personal property. The Investment Visa Program has established an Escrow Account for the purpose of safely holding an investor's funds at a leading bank in the United States. Under the agreements entered into with the servicing affiliate, the investor's investment money is not authorized to be released from the Escrow Bank Account by the bank until the visa I-526 Petition has been approved. This process was created to protect the investor.

Lawfully Gained Assets

Assets gained in a lawful manner. Investor must prove his investment funds were obtained through lawful business, salary, investments, property sales, inheritance, gift, loan or other lawful means.

Limited Liability Company (LLC)

A limited liability corporation is formed by filing a charter with a state government and consists of managing members and one or more other members. The charter details the rights and powers of the managing and management members, percentages of ownership, and distributions of profits. The managing members manage the business.

Passive Investment

An investment where the investor is not involved in the day-to-day management or policymaking of the investment.

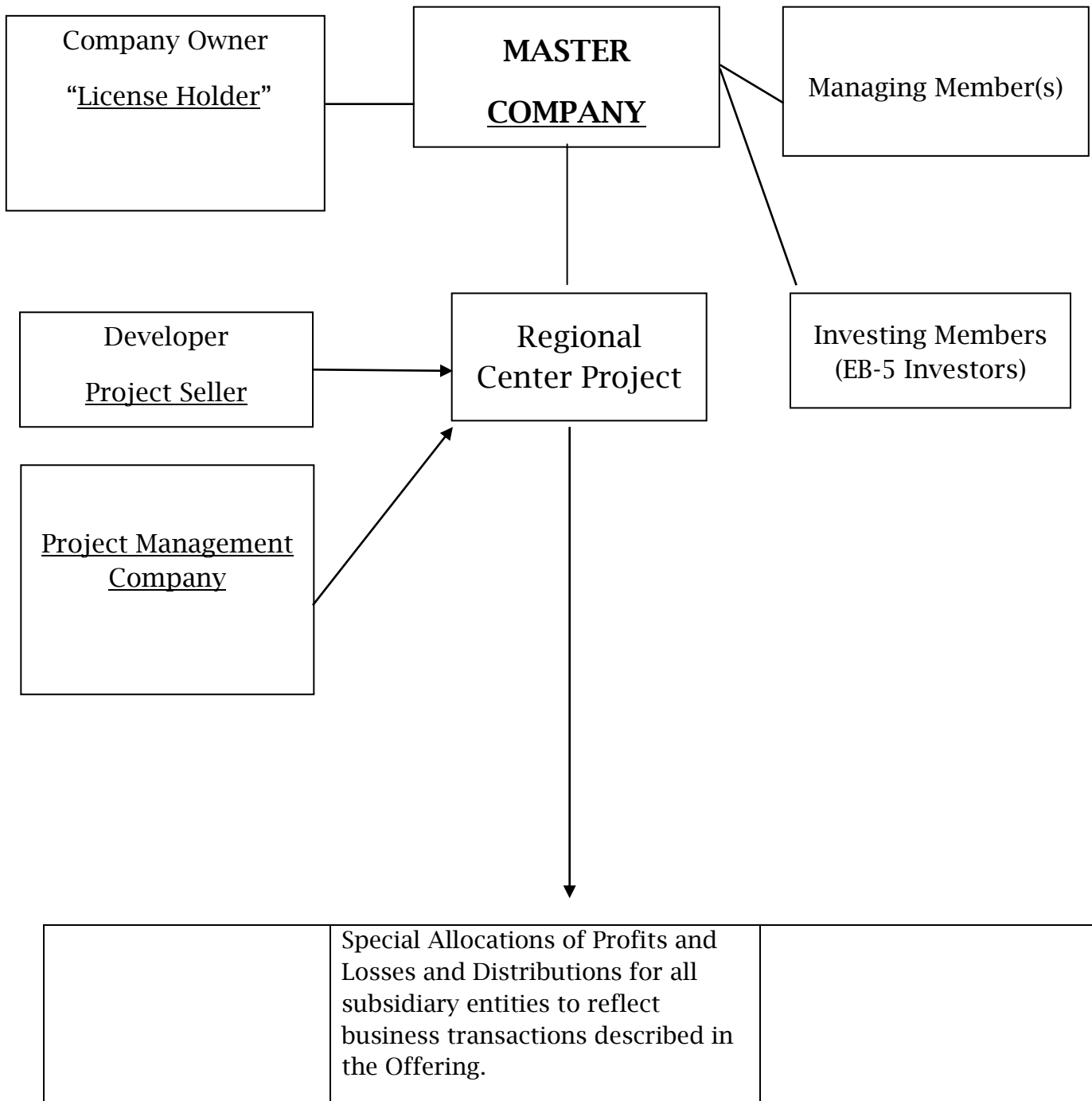
Permanent Residency

Once you obtain a green card, and become a legal permanent resident, you have most of the rights and obligations of U.S. citizens, except that you cannot vote and you are not entitled to some public benefits. You are subject to the same tax filing requirements and entitled to the same tax rates and deductions as U.S. citizens.

Unconditional Green Card

An unconditional Green Card does not need to be reissued.

Appendix 4: Sample Organizational Structure



Appendix 5:

Information for Sponsors and Investors

- Investor, spouse and children under 21 years of age will receive their green cards via the EB-5 program

SAMPLE REGIONAL CENTERS

- JAY PEAK, VT
- SEATTLE, WA
- CALIFORNIA-MILITARY BASES
- WASHINGTON, DC
- NEW ORLEANS, LA
- LAKE BUENA VISTA, ORLANDO, FL
- 80 OTHERS

NO RESTRICTION AS TO NATIONALITY

- Any national from any country may be able to qualify if personal conditions are appropriate.

NO ON SITE WORK OR MANAGEMENT FOR INVESTOR

- Investor and family are free to undertake independent work or study anywhere in the US at US resident rates.

NO U.S. GEOGRAPHICAL LIMITATION TO INVESTOR

- Investors and family do not have to reside in or near the location of the regional center.

10,000 VISA NUMBERS AVAILABLE

- 3,000 for Regional Centers Annually
- Quota has never been reached!

NO ADDITIONAL INVESTMENT

- One time payment of investment and administration expenses.

IMMEDIATE CASH FLOW!

- Project financial analysis is important.
- Projects do vary according to plan.

SECURE COMMERCIAL INVESTMENT

- No guarantees but you must review financial structure before investing.

APPROVALS WITHIN EIGHT MONTHS!

- This includes USCIS review and consular processing in most cases.

INTEGRITY OF SPONSOR

- Always verify sponsor history and business track record.

HISTORY OF SPONSOR

- History must be flawless and consistent.

HIGH NET WORTH PARTNERSHIP & INDIVIDUALS

- Investigate before you invest!

GLOBAL MARKETING!

- Investors will be attracted to good projects from all over the world.

LOCATION!! LOCATION!! LOCATION!!

- For short term identity and long term benefits.

LUXURY BRANDING!

- Many projects co brand with known names.

PROJECT RETURN OF CAPITAL AND EXIT STRATEGIES!

- Ensure there is an established exit strategy and an 'assurance' of return of capital.

U.S. JOB CREATION!

- Sponsor creation of 10 Direct and Indirect Jobs per investor family.

BUSINESS AND ECONOMIC PLANS

- Business plan must make economic sense and economic plan must demonstrate reasonable expectation of job creation.

SECURITIES DOCUMENTS

- Review of Private Placement Memorandum, Operating Agreement, Subscription Agreement, and Escrow Agreement.

UNITED STATES CITIZENSHIP & IMMIGRATION SERVICE (USCIS) CONTROLS AND AUDITS

- Review of all regional center submissions and applications for conditional residency.

Appendix 6:

Instructions to Prospective Sponsors

- Select a multi phase commercial project;
- Ensure that the value of the Regional Center (RC) application is greater than \$100 million for it to be cost effective;
- Ensure that the project in the region can generate ten(10) U.S. jobs directly and indirectly;
- Assess unemployment levels in the geographic region of the project;
- Review unemployment statistics in census tract and county;
- Gather all financial records and marketing materials to date for review by counsel;
- Establish a good relationship with an international banking concern for escrow purposes;
- Establish a good network of referral sources for foreign investors;
- Harness a team of experts within the organization to bring their expertise to the project;
- Review all charts related to the EB-5 program and become familiar with its terminology, strengths and limitations;
- Fully discuss with counsel the benefits and obligations of the EB-5 program, including pending Congressional legislation;
- Advance send aerials, summaries and business plans of the project as well as the organizational chart of existing team members;
- Request draft agreements for the submission of the regional center application, the investor legal representation for immigrant visa, the marketing plan and compliance for the regional center;
- Review all content of the draft agreements and comment thereon if necessary;
- Establish the number of investors needed for the project;
- Establish a working name for the project;
- Execute all agreements and effect fee payments on a timely basis;

- Review payment schedule for team participants;
- Arrange for team meetings to organize Regional Center submission;
- Deploy all phases for establishment of the regional center and marketing to investors simultaneously and seamlessly;
- Arrange for regular team teleconferences;
- Arrange for initial market test of investor interest domestically and internationally;
- Assess any internal limitations;
- Establish working marketing budget;
- Conclude a preliminary SWOT analysis;
- For Regional Center submission, ensure participation in business plan, immigration documents, Securities documents, marketing plan and economic analysis (approximately four months from conception to submission to USCIS);
- Ensure that all immigration submission documentation are prepared on a timely basis;
- Await decision from USCIS for Regional Center Designation and prepare marketing structure in the interim;

Appendix 7: Letters of Support

POLITICAL

- ❖ Counties
- ❖ Governor
- ❖ Mayor
- ❖ Senators
- ❖ State Representatives
- ❖ State Senators
- ❖ County Commissioners

ECONOMIC DEVELOPMENT ORGANIZATIONS:

- ❖ Economic Development Agency: Statewide
- ❖ Economic Development Agency: Local
- ❖ County Commissioners and Economic Director
- ❖ Convention and Visitor Bureau

CHAMBERS OF COMMERCE:

- ❖ Local'
- ❖ Business
- ❖ Trade Organizations
- ❖ Labor Organizations
- ❖ Industry Groups

RELATED:

- ❖ Theme Parks
- ❖ Past Clients/Buyers
- ❖ National Association Realtors
- ❖ Board of Realtor
- ❖ American Immigration Lawyers Association

Appendix 8: Developer Checklist

- ❖ Build Out Phases and Permits
- ❖ Financial Statements Which Include:
 - Distributions to Investors
 - Development Budgets
 - Operation Budgets
- ❖ Organizational Chart of All Employees/Management
- ❖ List of Subcontractors
- ❖ Projected Tenant List
- ❖ History of Developer and Development
- ❖ LLC Agreements
- ❖ LLC Certificates from the Secretary of State
- ❖ Sales Package to Include:
 - Aerials
 - Floor Plans
 - Renderings
- ❖ Letters of Appreciation from State and Local Officials

Appendix 9:

Factors to be Included in The Regional Center Annual Compliance Report

1. The principal office and point of contact of the REGIONAL CENTER, responsible for the normal operation, management and administration of the regional center.
2. How the RC is administering its regional center and is actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investors' ability to fully invest the requisite amount of capital.
3. How the RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the regional center.
4. The name, date of birth, and alien registration numbers of each alien investor who makes an investment and files an EB-5 I-526 petition with USCIS, specifying whether the petition was approved, denied, or withdrawn by the petitioner.
5. The country of nationality of each alien investor who makes an investment and file an EB-5 I-526 petition with USCIS.
6. The U.S. city and state of residence of each alien investor who makes an investment and files an EB-5 I-526 petition with USCIS.
7. The categories of business activity within the geographic boundaries of your regional center that have received the alien investors' capital, and in what amount.
8. The names and locations of each job creating commercial enterprise located within the geographic boundaries of your regional center that has received alien investor capital.
9. The amounts of alien investor capital and the amounts of other domestic capital that has been invested together in each job, creating commercial enterprise specified in item 8 above, distinguishing the separate totals for each. *
10. The total aggregate number of approved EB-5 alien investor I-526 petitions per Federal Fiscal Year to date made through your regional center.

11. The total aggregate number of approved EB-5 alien investor I-829 petitions per Federal Fiscal Year to date made through your regional center.
12. The total aggregate of EB-5 alien capital invested through your regional center for each Federal Fiscal Year to date since your approval and designation.
13. The combined total aggregate of “new” direct and/or indirect jobs created by EB-5 investors through your regional center for each Federal Fiscal Year to date since your approval and designation.
14. If applicable, the total aggregate of “preserved” jobs by EB-5 alien investors into troubled businesses through your regional center for each Federal Fiscal Year to date since your approval and designation.
15. If for any given Federal Fiscal Year, your regional center does not have investors to report, and then provide an explanation for the inactivity along with a specific plan which details timelines and steps to actively promote your regional center program, and recruit legitimate and viable alien investors.
16. Notification to USCIS within 30 days of the occurrence any material change in the structure, operation, administration, focus, or activities relating to your regional center’s basis for its most recent designation and/or reaffirmation by USCIS.
17. The total aggregate of EB-5 investors. A separate break out by aggregate amount of alien investor capital vs. aggregate amount of domestic capital invested where applicable.

Appendix 10: Due Diligence Checklist

1. Attorney Due Diligence

- a. Review basics of marketed Regional Centers program. Do not recommend just one program; let client choose.

An important consideration is an EB-5 Regional Center program with the long term results.

- b. Recommend client retain their own independent real estate and/or business attorney to review the Subscription Agreement and/or Purchase Agreement.
- c. Recommend client to retain their own tax attorney and financial advisor regarding profitability of the EB-5 investment and its tax consequences to the client.
- d. Recommend client visit investment project and see past investment projects.
- e. Prepare a Fee Agreement if involved in the EB-5 case regarding adjustment or consular processing.

All recommendations should be stated in the Fee Agreement.

- f. Obtain State Bar opinion from Bar or Ethics attorney regarding finder's fee payment to attorney.
- g. Prepare a separate Consent to third party finder's fee payment.

2. Client Due Diligence regarding EB-5 Project

- a. What is the projected return on investment? (*in prospectus*)
- b. Obtain documentation of returns on past EB-5 investment projects.
- c. How many projects has EB-5 company completed?
- d. Does EB-5 applicant need to invest additional money over and above investment at a later date?
- e. Does EB-5 project have U.S. investors as well as immigrant investors?
- f. Does applicant get interest on money until it is spent on EB-5 project?
- g. When is the return paid? Monthly, yearly, end of project.
- h. How is the return determined?
- i. In Subscription Agreement or Purchase Contract, is there a provision for return of money if I-526 denied? If I-829 denied?

Appendix 11: Marketing Kit

- ❖ DVD for Program
- ❖ Brochure - 4 Pages/insert
- ❖ Floor Plans
- ❖ EB5 Team Summaries
- ❖ The Amenities
- ❖ The Aerials
- ❖ Investor Ownership Summary: Package
- ❖ Regional Amenities
- ❖ The Pictorials
- ❖ The Newsletter
- ❖ Website
- ❖ Prospectus & Offering; Exhibits
- ❖ Exhibitions, Fairs & Conferences

DOMESTIC:

- ❖ AILA National
- ❖ AILA Regional
- ❖ Florida:
 - Enterprise Florida: Statewide
 - Economic Development Organization: Orange County
 - National Association of Realtors

INTERNATIONAL:

- ❖ United Kingdom
- ❖ France
- ❖ Trinidad:
 - Realtors
 - Attorneys
 - Chamber's of Commerce
 - Manufacturer's Associations
 - Embassy & Consulate's
- ❖ China
 - Realtors
 - Attorneys
 - Chamber's of Commerce
 - Manufacturer's Associations
 - Embassy & Consulate's

Appendix 12: Potential Exit Strategies

OPTION ONE:

- ◆ INVESTORS RETAINING OF INVESTMENT

OPTION TWO:

- ◆ INVESTORS SALE INVESTMENT AT FIVE YEARS

OPTION THREE:

- ◆ SALE OF LLC BY MEMBERS (BULK SALE)

OPTION FOUR:

- ◆ FRACTIONALIZE THE INTEREST

OPTION FIVE:

- ◆ CONVERT INTO DIRECT OWNERSHIP OF UNITS

OPTION SIX:

- ◆ INITIAL PUBLIC OFFERING TO EXIT STRATEGY

Appendix 13: New Investor Considerations

The following constitutes the principal considerations of any new regional center investor:

1. Safety of investment;
2. Return of principal in the business plan;
3. Fair rate of return during process;
4. Personal investment by the sponsor;
5. Green card benefits for investor and family;
6. Synchronized processing to ensure timely delivery of conditional and full residency;
7. Security of U.S. political and economic foundations.

Appendix 14:

Sample Reservation Agreement

To: Regional Center Sponsor

Re:

I/We, _____, hereby agree to pay a deposit of \$50,000 to secure an investment position as a member in the EB-5 program in _____ subject to investor suitability and accreditation.

US\$50,000 deposit will be paid immediately to the benefit of _____ **Escrow Account** to RBC/Centura Bank. The balance of US\$500,000.00 will be paid to _____ escrow account within 60 days of this agreement to complete the investment per the Subscription Agreement.

I/We understand that interest on the deposit, if any, shall accrue to the benefit of the company. The Deposit is non-transferable.

Investor Signature

Date

Name: _____

E-mail address: _____

Phone: _____

Cell: _____

Address: _____

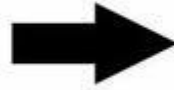
Appendix 15: EB-5 Investor Flow Chart

<u>STEP</u>	<u>IMMIGRATION PROCESS</u>	<u>TIMELINE</u>
1	Investor: Researches Website · Is referred by an agent · Receives marketing material · Visits project	Month 1
2	Investor Registers: Online via website · by email · by Fax · In writing (<i>letter or otherwise</i>)	Month 1
3	Investor: Receives log in number · Confirmation by email only	Month 1
4	Investor: Receives description of project · Wire transfer instructions · Reservation agreement · Accreditation Questionnaire	Month 1
5	Investor: Wires \$25,000 USD refundable reservation to Bank Escrow Acct	Month 1
6	Investor: Confirms by signing and returning Subscription Agreement and Reservation Agreement	Month 1
7	Investor: Receives and completes Questionnaires and returns information to Larry J. Behar, P.A. · Receives numbered prospectus and Operating Agreement for review and signing	Month 2
8	Investor: Wires second payment of \$25,000 USD upon accreditation acceptance to Bank Escrow Acct	Month 2
9	Investor: Remits balance of investment for \$500,000 or \$1,000,000 USD to Bank Escrow Acct	Month 3
10	Investor: Submits all documents for filing I-526 / Retainer Agreement & Disclosures	Month 3
11	Attorney: Larry J. Behar, P.A prepares for filing I-526 with USCIS	Month 4
12	Approval: I-526 Petition and Notification	Month 12
13	Investor: Elects adjustment of status or consular processing	Month 12
14	Approval: Sent USCIS or Consulate	Month 12
15	National Visa Center: Pre-consular preparation (New Hampshire) at home Embassy or Consulate - sealed envelope entry to the United States (<i>4 months</i>) I-551 · Stamp at border	Month 12-16
16	Conditional Residents (2 years) from Residency approval of I-526	Month 16
17	Monitor Progress of Construction	Month 34
18	Month 18 (from conditional residency): Lifting of conditional status USCIS - I-829	Month 34

<u>STEP</u>	<u>IMMIGRATION PROCESS</u>	<u>TIMELINE</u>
19	Decision of Full Residency (<i>fingerprints & biometrics</i>)	Month 40
20	I-551 - Full Residency Card (<i>by Mail in 60 days</i>)	Month 42
21	Business Exit Strategy (<i>optional</i>)	Month 66

Appendix 16:

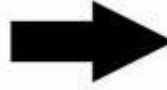
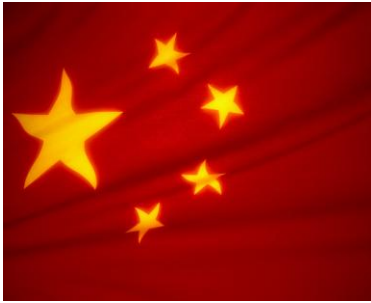
Simplified Charts – \$1 Million Investment



<u>WHY?</u> ➡	<u>HOW?</u> ➡	<u>WHO?</u>
US Investment & Green Card	EB-5 Program U.S Government	Approved Regional Center Larry J. Behar PA

<u>WHAT?</u> ➡	<u>WHEN?</u> ➡	<u>COST?</u>
Approved Regional Center	Plus four months	\$1,000,000.00

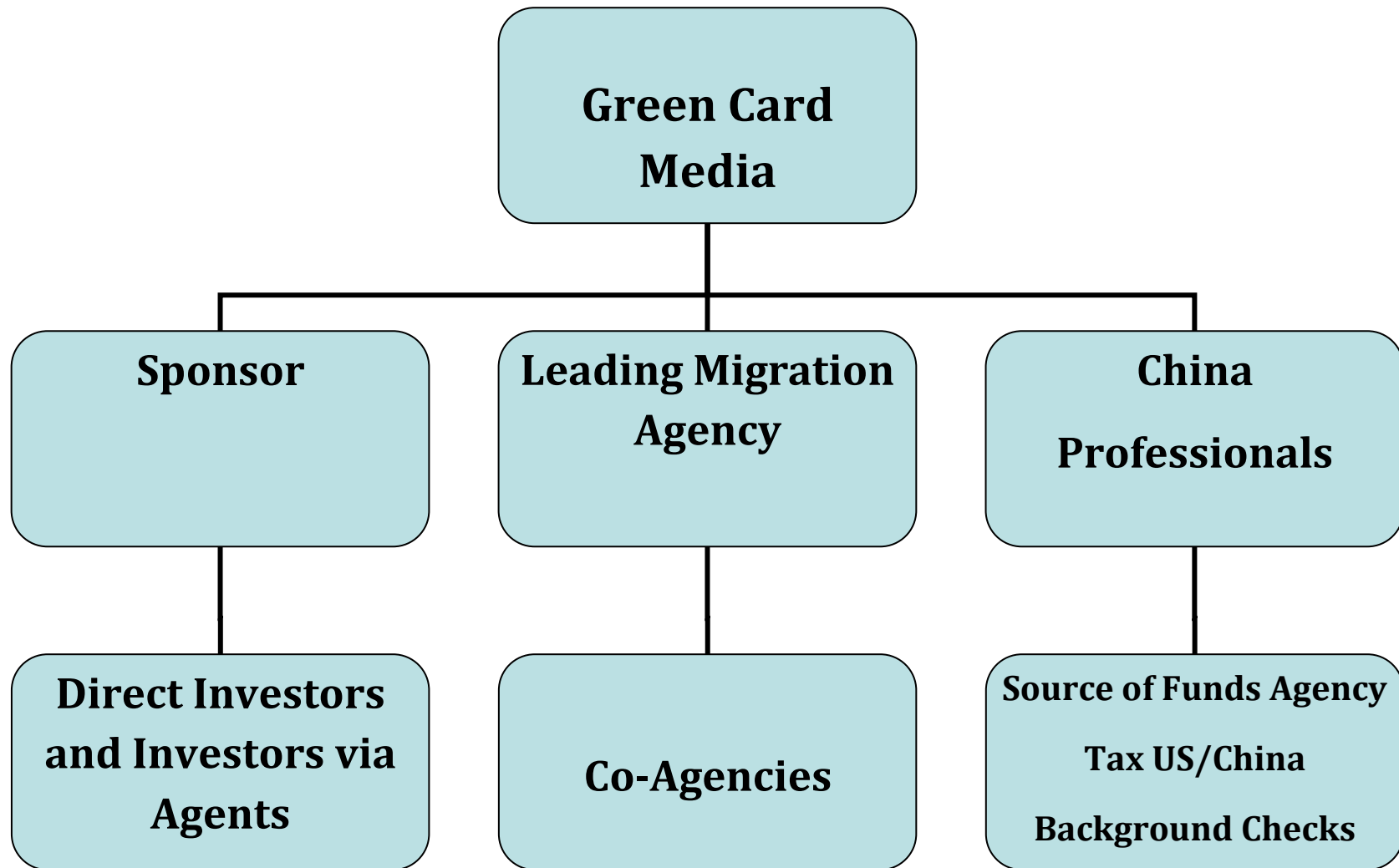
Simplified Charts- \$500,000.00 Investment



<u>WHY?</u> ➡	<u>HOW?</u> ➡	<u>WHO?</u>
US Investment & Green Card	EB-5 Program U.S Government	Approved Regional Center Larry J. Behar PA

<u>WHAT?</u> ➡	<u>WHEN?</u> ➡	<u>COST?</u>
Approved Regional Center	Plus four months	\$550,000.00

Appendix 17: China Seminar Chart



Appendix 18:

Investor Qualifications and Accreditation

- ❖ Review of Prospectus and Exhibits
- ❖ Valid Passport
- ❖ All nationalities may qualify
- ❖ Net Worth Greater Than \$1Million
- ❖ No Criminal Record (under U.S. law)
- ❖ Availability of Funds in 60 Days
- ❖ List of immediate family members and children under 21 years of age
- ❖ Identifiable and Legal Source of Funds
- ❖ Income Greater than \$200,000.00 in last 2 Years
- ❖ Independent Legal & Advisory Counsel
- ❖ Five years past tax returns (verifiable)

Appendix 19: Investor Accreditation

Preliminary Evaluation

So as to allow you to ensure eligibility for EB-5 status, kindly respond to the questions below and return to us by email or fax. Thank you.

1. Do you have a **criminal record**? If so, please describe.
2. Can you demonstrate the last five years of **tax returns** from your home country?
3. Do you have a **net worth** of greater than \$1 million or have you generated greater than \$200,000 income annually in the last two years?
4. Can you justify the **source of funds** for the \$500K or \$1 million investment being made in the EB 5 program?
5. Was the \$1 million investment secured by personal savings, inheritance, gift or other **lawful means**?
6. Do you have a college or university **diploma** or business work history?

SIGNATURE OF APPLICANT

Kindly return this confidential information to our firm for review and confirmation.

Appendix 20: Investor Ineligibility

Consider the following factors which may negatively influence an investor's eligibility. Keep in mind that the factors are not limited to scope of this list.

1. Age out issues for formerly minor children;
2. Admissibility issues based on technology, security, US national interest;
3. Criminal record;
4. Out of status or visa violations;
5. Military history;
6. Political history;
7. No waiver of eligibility options;

Appendix 21: EB-5 Master Checklist

- EB-5 Principal Investor Questionnaire
- EB-5 Spouse Questionnaire
- EB-5 Child Questionnaire
- Subscription Documents
- Wire transfer instructions for Escrow Account
- Marriage certificate (if married in Florida, certificate needs to have the number of marriages & social security numbers on the lower portion)
- Divorce decree(s)
- Birth certificates (Investor, Spouse and Child)
- Photographs (see instructions; 4 per person)
- Curriculum vitae for Investor
- Bank statements showing funds invested, source of funds and path of funds
- Income tax returns for last five (5) years
- Military or criminal record(s), if any
- Passport copy (all pages) with at least twelve (12) months validity
- Diploma(s) or certificate(s), if any
- Translations and notarization
- Letters of recommendation (5)
- Business plan - (Sponsor)
- Economic plan - (Sponsor)

Appendix 22: Developing the Investor's Empowerment Binder

Our firm is recommending very precise and tight organization of your documents to be reviewed by any government official.

As such, we recommend that the following instructions be completed as soon as possible:

1. go to any office supply store;
2. purchase a three ring binder of any color which is at least 2" in width;
3. purchase fifty sheets of transparencies with holes for the binder;
4. prepare a list (Exhibit) of all documents you will be placing in the binder; (see below for guidance as to what documents should be included)
5. for each document, insert the original on the front of the plastic transparency and a copy on the back of the same transparency;
6. compile an entire list of required documents;
7. REMIT A SET OF COPIES OF THE DOCUMENTS TO US OR THE ORIGINALS IN AN 8 x 10 MANILLA FOLDER OR ENVELOPE.

This will assist a great deal at the interview and give you credibility before the officer. It is also a safe way to preserve and centralize your key documents.

U.S. Bank Statements of Deposits	Bank Wire Instructions (2 Accounts)
Evidence of Money Transferred	Financial Commitment and Signature
Loan/Mortgage Agreement, Promissory Note, Security Agreement, Borrowing	Legal Fees
Foreign Business Registration Records	Government Fees
Tax Returns (5 Years)	Source of Funds
Source of Capital	Photographs (8)
Monetary Judgments (15 Years)	Medical Exams
Stock Sale	Financial Statement
Master Documents	Birth Certificates
Passport Instructions	Divorce Decrees
Criminal Records	Net Worth Statement
Foreign Banking Source	I-526, G-28

Appendix 23: Memorandum: Source of Funds

In the aftermath of the September 11th, 2001, attacks, the U.S. Congress enacted the PATRIOT Act. The initials stand for: “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” In particular, Title III of the Act is intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. As a result, banks and other financial institutions have become more vigilant of financial transactions, particularly when dealing with international individuals or entities. U.S. government authorities, including the U.S. Citizenship & Immigration Services and foreign consulates have also heightened the scrutiny and standard of review of applications for immigration benefits, particularly those which require that an applicant demonstrate an investment.

Our firm will ask you to provide documentation as to each financial transaction which constitutes an “investment” in the U.S. enterprise. In particular, our firm needs the following documentation to demonstrate such investment: bank account statements (personal and corporate), wire transfer orders, deposit slips, online banking printouts reflecting the transactions, financial statements, etc. Other documents may be requested depending on your particular situation or structure.

In today’s world, it is not sufficient to demonstrate that an investment has been made but also to demonstrate the “lawful source of funds” for such investment. You cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Rather, you must document the path of the funds to show that the original source of the money is lawful.

By way of recommendation, please keep in mind the following caveats:

1. Keep accurate and detailed records of each financial transaction related to your investment. Make sure to keep copies of the bank statement reflecting the withdrawal of funds as well as the bank statement reflecting the deposit of funds.
2. Ensure that the funds come from either a personal account in your name or a corporate account of a corporate entity which you own and control.
3. In most cases, the reviewing officer will not request evidence as to how the funds were obtained by the investor in the first place. However, some officers will initiate an inquiry as to this point and additional evidence may be necessary.

4. **Retain personal and business income tax returns for at least the past five years.**
5. Please consult with your immigration attorney before obtaining a loan to finance the U.S. investment.
6. If funds are received as a gift, please have available evidence to demonstrate how the gift giver obtained the funds in the first place.
7. Keep copies of all records related to the sale of an asset from which funds have been derived to finance your U.S. investment (i.e. purchase and sale agreements, closing statements, brokerage account statements, etc.)

As in all immigration applications, each case is different and it is highly recommended that you consult with your attorney on individual matters pertaining to your case.

Appendix 24: Best Practices for Agents & Attorneys of Regional Centers

TO: ATTORNEYS/RECRUITERS/ AGENTS

The following suggested practices are for the purpose of helping preserve the integrity of the EB-5 Program.

1. Please confirm that your firm that has offices in the U.S;
2. Please confirm that you are proficient in the English language and are familiar with emigration services;
3. Please submit your resumes if you are an agent, principal of company or attorney;
4. Please arrange to meet with us personally at our office and to visit your office;
5. Advise your knowledge of the EB-5 program;
6. Advise how you plan to advertise projects and perform due diligence;
7. Define terms of working relationship; no exorbitant fees to be charged to potential investors;
8. We will educate as to what is permissible/lawful when promoting regional center project;
9. We need to approve all publicity materials and advertisements prior to publication (English version and translation);
10. We need to approve where the ads will be placed;
11. Disclaimers in all printed materials with regards to translation into other languages;
12. Please advise if you have any agreements with other agents who may assist your firm with recruiting efforts and visa cases; we take no liability as to the “recruiting behavior” of third parties i.e. misrepresentation of terms of project, or USCIS laws, policies, procedures;
13. We are developing policies and procedures in a “Recruiter Manual”.

Appendix 25: Websites and Portals

Current Regional Centers:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=d765ee0f4c014210VgnVCM100000082ca60aRCRD&vgnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD>

USCIS Website: www.uscis.gov

EB-5 Dream Team: www.eb5dreamteamusa.com

The Behar Law Group: www.eb-5lawyers.com

DEVELOPERS, INVESTORS, AGENTS, OFFICIALS, ATTORNEYS DECISION-MAKERS

..... U.S. developers need capital. Foreign Investors need a home.

The U.S. economy through job creation is the winner.....

EB-5 Immigration through Investment... welcomes you to the incredible benefits, responsibilities and opportunities of the congressionally mandated EB-5 program which creates a platform for foreign nationals to become lawful residents (green card holders) of the United States. *Also available in DVD format and on web www._____ .com*

- ✧ *“This book is required reading for anyone seeking capital abroad” ... **Sponsor***
- ✧ *“Thank you Larry for giving us hope in this economy, your global vision has given us strength” ... **Agent***
- ✧ *“A thoughtful, comprehensive guide which will help thousands of people” ... **AILA rney***
- ✧ *“Nothing comparable. The short chapters, in easy to understand language makes it an easy read. Before I invested I consulted this book” ... **Investor***
- ✧ *“Mr. Behar has succeeded in erasing all the mysterious issues of the EB-5 program in one book. Its simplicity is its strength! Its transparency makes it invaluable” ... **Official***
- ✧ *“In his 30 plus years immigration career as a distinguished Attorney, Larry has helped thousands of immigrants and non-immigrants from 36 nationalities, therefore its no surprise that he continues in this path of helping people. He is a people person” ... **past Client***



Larry J. Behar, Senior Attorney, Member of the Florida Bar, American Bar Association, American Immigration Lawyers Association, in conjunction with his renowned EB-5 Dream Team, have created one-stop solutions. Economist, SEC Attorney's, Marketing and Business Plan Writers – The Dream Team has a proven track record of success in the creation and administration of Regional Centers throughout the U.S.

..... Concise, Comprehensive, Contemporary Prior work includes “How to Immigrate to the U.S.A.” available in 3 languages.