

# How to Obtain a Green Card by Investing in the United States

by Leila Mansouri

Many people around the world wish to acquire permanent residence in the United States. Permanent residence is first acquired when one receives a “Green Card.” Once a person has held a green card for five years, they are eligible to become a citizen of the United States.<sup>1</sup> The process of becoming a citizen is known as “naturalization.”

Foreigners or “aliens” must first enter the United States with a conditional immigrant visa, and then may later adjust their status for permanent residence if they meet certain requirements. At this time, it is unfortunately not possible to obtain a green card<sup>2</sup> simply by purchasing real estate. There have been talks of amending the laws in favor of this, but no legislation has yet been passed.

Entrepreneurs and their spouses and unmarried children under the age of 21, who make a qualified investment in a commercial enterprise in the United States and who plan to create or preserve ten permanent full time jobs for qualified United States workers, are eligible to apply for a green card. The entire petition and approval process can take as little as four to eight months. The investor visa has several requirements, and this article will describe them.

United States Customs and Immigration Services (USCIS) administers the Immigrant Investor Program, also known as the “EB-5” visa program. It was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The investor visa has become increasingly popular to foreign investors over the last decade. The United States will authorize up to 10,000 visas<sup>3</sup> each year for eligible entrepreneurs. If the visa is authorized, the USCIS will grant

conditional permanent residence to the individual.<sup>4</sup> Fortunately, most applications in recent years have been approved.<sup>5</sup>

The investor must be active with the business or project site or at least be on its Board of Directors. It is not necessary to live in the same state as the project; many people work via the internet or telecommute. The investor does not need to speak English, as there is no language requirement for becoming an investor.

Having a green card affords many of the same privileges that US citizens have, including a free public school education, same university fees as citizens, and access to certain government health services after five years. If the investor eventually decides to move back to his home country, his children may still remain in the United States as permanent residents.

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1 It takes five years to become a citizen (three years if by marriage). You also need to be in the US for half of this time period. You cannot have substantial periods of time outside the US, because you need to prove that you continuously resided in the US. If you spend more than six months outside the US on any trip, you risk not being able to apply for naturalization.

2 See generally USCIS website

3 For more information see US Laws, Section 203(b)(5) of the Immigration and Nationality Act (INA) and 8 CFR 204.6 (Code of Federal Regulations)

4 Within 90 days before the two year anniversary of the date conditional permanent residence was obtained, the investor (and family) must file an I-829 petition to remove the conditional status in order to become a permanent resident. Failure to file this petition will automatically cause you to lose your permanent resident status and make you removable from the United States.

5 USCIS application statistics can be found on their website: [www.uscis.gov](http://www.uscis.gov)

The green card holder may live and own property anywhere, and many states<sup>6</sup> offer substantial property tax savings. It is important to note the fact that all United States citizens and permanent residents are subject to worldwide taxation. Also, most states have income tax. If the investor plans to move all of her assets to the United States, she can avoid double taxation. However, if she plans to continue doing business in her home country, she may run in to such a problem.<sup>7</sup>

All EB-5 investors must invest<sup>8</sup> in a new “commercial enterprise,” which is:

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
  - a) Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
  - b) Under a pilot immigration program (regional center) first enacted in 1992 and regularly reauthorized since, or expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs.

A commercial enterprise means “any for-profit activity formed for the ongoing conduct of lawful business, including but not limited to: a sole proprietorship, limited or general partnership, holding company, joint venture, corporation, or private/public business trust.”<sup>9</sup>

There are three different routes to obtaining an EB-5 visa and over 90% of EB-5 applicants invest in to a “Regional Center.”

### **1. Invest \$1,000,000 into a commercial enterprise and hire ten employees,<sup>10</sup> or**

### **2. Invest \$500,000 and hire ten employees in a “targeted employment area,” which means an area where the unemployment rate is 150% of the national average or the rural<sup>11</sup> population is less than 20,000,<sup>12</sup> or**

### **3. Invest \$500,000 into a Regional Center<sup>13</sup>**

Most EB-5 petitions contain escrow agreements which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 (Investor Visa) petition.

#### **Job Creation Requirements**

As mentioned above, the investor must create or preserve at least ten (10) full-time jobs for qualifying U.S. workers within two years<sup>14</sup> of the immigrant investor’s admission to the United States as a Conditional Permanent Resident. Full-time employment means a position that requires a minimum of 35 working hours per week.<sup>15</sup>

These jobs can be created or preserved in a direct or indirect way. Direct jobs are “actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.”<sup>16</sup>

Indirect jobs are those jobs shown to have been created “collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.”<sup>17</sup>

Investors may only be credited with preserving jobs in a troubled business. A troubled business is a business that has been in existence for at least two years and has “incurred a net loss during the 12- or 24-month period prior to the priority date on the immigrant investor’s Form I-526. The loss for this period must be at least 20 percent of the troubled business’ net worth prior to the loss.<sup>18</sup> For purposes

6 Florida is an example

7 It is always important to seek the advice of different tax specialists.

8 Multiple investors are allowed, but each investor must fulfill the same requirements for amount and job creation. Permanent residence can be granted to the families of each investor.

9 USCIS makes clear that this definition does NOT include owning and operating a personal residence.

10 This includes expanding an existing business by 140 per cent of the pre-investment number of jobs or net worth, or retaining all existing jobs in a troubled business that has lost 20 percent of its net worth over the past 12 to 24 months.

11 A rural area is any area outside a metropolitan statistical area (as designated by the US Office of Management and Budget) or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census.

12 Congress has reserved 3,000 of the 10,000 visas for this category

of determining whether the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.”<sup>19</sup>

A qualified employee is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may even be a conditional resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation.<sup>20</sup>

### Regional Centers

Perhaps the most attractive way to invest is through projects known as regional centers.<sup>21</sup> This is preferred because they are areas that have already been designated by the USCIS as eligible to receive immigrant investor capital. Moreover, investors may rely on these to indirectly create jobs,<sup>22</sup> rather than directly hiring the requisite ten employees. It is important to be aware that just because an investor chooses a Regional Center, the petition may still be denied. Also, the Government does not guarantee the quality of any regional center. The investor must assess each investment based on its own merits, and it would be useful to seek professional help in this regard. All Regional Centers have some risks associated with them. If seeking the advice of a Professional, it is important to make sure that person has physically visited the regional center site at least twice for added security.

There are three types of **Regional Center** investment schemes to choose from:

### Loan Based Investments

In this type of scheme, an investor’s funds are lent to another organization for creating local infrastructure projects. A municipality or development agency usu-

ally becomes responsible for repaying the investor’s capital. Should the municipality or agency default or restructure its debt, it could be a long time before the investor’s capital is repaid.<sup>23</sup>

### Equity Investments – active trading businesses

Equity investments are asset based and can consist of either property or actively trading businesses. Active trading businesses are managed directly by the company operating the Regional Center. The active trading businesses are small and are not on any recognized stock exchange. They are vulnerable to market forces such as demand and competition, so their value and prospects are hard to assess. Unfortunately, history proves that many of these types of investments have failed. Funds can be lost entirely and, even if some capital is recovered, it might take a considerable amount of time.<sup>24</sup>

### Equity Investments – property/real estate

Although most investments carry risks, if you can choose an area where the property prices have historically grown or remained relatively stable, then risk is further reduced. It is a common principle of real estate that a property with zero debt carries almost no risk of loss. Compared to a trading activity or a loan, a property is a fixed piece of land that cannot be taken away. Buildings may be destroyed, but if insured, will be replaced. Even when values decline during recessionary periods, they eventually increase again.

### Capital

Investment capital cannot be borrowed. Capital means “cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial

13 A Regional Center is an entity, organization, or agency that has been approved as such by the USCIS. The pilot program with the coinciding federally designated regional centers was approved by Congress under Section 610(c) of the Appropriations Act of 1993. It is set to end September 2012, but may be extended. These centers focus on a specific geographic area within the United States and aim to promote economic growth through increased export sales and creation of new jobs. Investors can take credit for jobs created directly as well as indirectly from their investment in the Regional Center. Congress gave the USCIS discretion to give priority to EB-5 applications filed in conjunction with a Regional Center.

14 Under certain circumstances, within a reasonable time after the two-year period will also be acceptable.

15 The position must be permanent, full-time and constant. A job-sharing arrangement whereby two or more qualifying employees share a full-time position will count as full-time employment provided the hourly requirement per week is met. This definition does not include combinations of part-time positions or full-time equivalents even if, when combined, the positions meet the hourly requirement per week. The two qualified employees sharing the job must be permanent and share the associated benefits normally related to any permanent, full-time position, including insurance.

enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair-market value in United States dollars.”<sup>25</sup>

### The Petition

If you live outside the United States, you can become a permanent resident through consular processing, which is when USCIS works with the State Department to issue a visa on an approved Form I-526 petition.<sup>26</sup> In cases where the investor’s home country does not have a US Consulate, the investor will need to travel to a nearby, designated Consulate.<sup>27</sup> You can also file if you are already in the United States.

### Checklist of Requirements

- Form I-526, Immigrant Petition by Alien Entrepreneur<sup>28</sup>
- You are admissible to the United States. For example, you have not been banned from entry for reasons such as overstaying a previous visa or having a criminal background.
- An immigrant visa is immediately available (less than 10,000 have been issued this fiscal year)
- You should have evidence of a qualifying financial background for at least the last five years, and you must have the financial capacity to currently participate.
- You must be in good health and have no communicable diseases or serious mental disorders.

Once you have obtained an approved I-526 petition for conditional residence, you should immediately file an I-485 Adjustment of Status petition to adjust your residency status from conditional to permanent. You should submit the following evidence/documentation to support the I-485 application:

- The approval notice for Form I-526 (Form I-797)
- Two passport-style photos taken within the last 30 days
- Form G-325A, Biographic Information, if you are between 14 and 79 years of age
- Copy of government issued photo identification
- Copy of birth certificate
- Copy of passport page with nonimmigrant visa (if applicable)
- Copy of passport page with admission (entry) or parole stamp (if applicable)
- Form I-94, Arrival/ Departure Record (if applicable)
- Certified copies of court records (if you have ever been arrested)
- Form I-693, Report of Medical Examination and Vaccination Record
- Form G-1145 E-Notification of Application Acceptance

16 [www.uscis.gov](http://www.uscis.gov)

17 Id.

18 For quicker processing, an investor may submit an expedite request if there is danger of severe financial loss to a company or to an individual. This is not commonly granted however.

19 Id.

20 This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status (such as an H-1B visa holder) or who is not authorized to work in the United States.

21 A list of approved regional centers can be found on the USCIS website, which lists them by state.

22 They will be indirectly created by using a job multiplier formula that has been accepted by USCIS. Direct employment is not always beneficial, because job creation calculations may yield unfavorable results and lead to the denial of your petition.

23 Some companies are structured to provide security for the investor’s capital and a respectable annual return. In the event of a default, the asset can be sold.

24 The investor will not lose permanent residence status just because the invested money is lost.

25 Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital. See USCIS website.

Your spouse and unmarried children under the age of 21,<sup>29</sup> may be included on your immigration petition but you will have to pay additional fees for them.<sup>30</sup> If they are residing in the US, they will each need to file a Form I-485. They are counted towards the annual cap of 10,000 visas.

Generally, when you have a pending Form I-485, it is possible for you to apply for authorization to work in the United States and to seek advance permission<sup>31</sup> to travel and be admitted to the United States upon your return.

## Conclusion

Aside from marrying a citizen or winning the Green Card Lottery,<sup>32</sup> investing through the means described in this article is perhaps the quickest way to gain permanent residence in the United States. There are many attorneys and investment companies on the internet claiming they can help investors with their petitions, and it is important for potential investors to carefully evaluate all options before choosing which route to take. As in medicine, it is always prudent to seek second opinions for any course of action.

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26 As of March 20, 2012, the non-refundable filing fee for the I-526 is \$1500. The application form and its instructions can be found at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=79a7105b5904d010VgnVCM1000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

27 For example, Iranian investors typically visit the US Consulate in Dubai or Ankara.

28 The total processing time, including the consular interview, is usually around eight months.

29 Some forms refer to spouse and unmarried children as "derivatives."

30 As of March 20, 2012, the filing fee for Form I-485 is \$1070. Spouses and children must also each pay the fees, but for children under the age of 14, the fee is \$635.

31 This permission is also known as "advance parole."

32 The Diversity Visa Program, also known as the Green Card Lottery, is sponsored by the US State Department and offers a certain amount of Green Cards for applicants from most countries. Eligible applicants can apply online during a one month window each year, usually during the month of October. See generally, [www.dvlottery.state.gov](http://www.dvlottery.state.gov)