



## PERMANENT RESIDENCY FOR FOREIGN INVESTORS UNDER THE EB-5 PROGRAM

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MAIONA WARD is a boutique law firm which limits its practice to immigration and naturalization law. With approximately 25 years of immigration experience between the partners of the firm, we strive to produce professional, honest and cost effective services to all of our clients. MAIONA WARD represents both corporations and individuals who desire to work, live and travel to the United States.

Our attorneys have held roles including Chapter Chair of the American Immigration Lawyers Association, liaison to US Citizenship & Immigration Services, US Congressional liaison, liaison to the Executive Office of Immigration Review, Chair of the Military Assistance Program, Annual Conference Sub-Committee Chair and other related roles. Our attorneys frequently lecture on the topic of immigration law both locally and nationally and are called upon by media for opinions regarding immigration law and policy.





**What is the EB-5 Program?** The EB-5 Immigrant Investor Pilot Program was enacted in 1990 as a program to provide legal permanent residency status (green card) to foreign investors who invest \$500,000 or \$1 million (depending upon the geographical area) in a business that creates 10 full-time US citizen or

permanent resident employees/positions. In 1993, Congress created the regional center pilot program as a way to address various issues with the EB-5 program as then established. Today the EB-5 program has 194 approved regional centers, operating in 40 states including Washington DC and Guam according to the latest US Citizenship and Immigration Services (USCIS) data provided on January 23, 2012. There seems to be no lack of foreign investors who wish to invest their funds in United States businesses so that they can obtain lawful permanent residency. **What is a regional center?** According to the regulations, a regional center is any economic unit, public or private, which is involved with the promotion of economic growth, including export sales, improved regional productivity, job creation, and increased domestic capital investment. **What are the benefits of investing in a regional center?** The biggest advantage of regional center investments is that the foreign investor's EB-5 petition can be approved as long as 10 jobs for US citizens or legal permanent residents are created (these jobs can be either directly or indirectly created). This means that the regional center can use economic forecasting to predict indirect and actual employment created as a result of the project. Due to this fact, a majority of EB-5 applications are made through a USCIS approved regional center. **Do I need to invest in a regional center?** No. The investor may invest in his or her own commercial enterprise or in a commercial enterprise owned by other parties. However, the investor who chooses this option will need to be



more attentive to the immigration process as they must document the direct creation (indirect not available with this option) of 10 jobs for U.S. citizens or legal permanent residents as well as have a hands on management role in the business. The advantage to direct investment is that the EB-5 process is generally quicker with the direct investment versus the regional center investment. **Can I invest in a new, existing or troubled business?** The answer is yes to all three. One of the biggest stumbling blocks for the individual investor is proving that the investment has been made in a "new commercial enterprise." A "new commercial enterprise" can be created by an individual investor in one of three ways: (1) establishing a brand new business; (2) acquiring an existing business and engaging in significant "restructuring or reorganization"; or (3) expanding an existing business. (Please note that option (3) requires the investor to prove not only the creation of 10 new jobs but also the expansion of either net worth or number of employees of the



"troubled business" (a business with losses totaling 20% of net worth), there may be an opportunity to qualify based on preserving existing employees as opposed to adding new ones. **How do I invest the funds in an individual investment?** The investor must provide evidence that

the investment funds were gained by lawful means. Therefore regardless of how the funds were obtained, be it through loan, gift or the investors own funds, significant documentation is required to show the gifter, lender or investor obtained the funds lawfully. The documentation can include tax forms, employment records, bank records or other similar items which establish that the funds were lawfully gained. Once this is established the investor must provide the wire transfer showing the movement of the funds from the individual's foreign bank account into the US bank. **How does the investor receive lawful permanent residency?** Upon filing and approval of the I-526 and approval of the adjustment of status application, the investor will receive conditional permanent residency which is valid for two years. Three months prior to the expiration of the conditional residency, the investor must file to remove conditions to obtain full lawful permanent residency. During the removal of conditions process, the individual investor will have to prove that the requisite jobs were created or will be created within a reasonable time and that the funds were not withdrawn.



**What is the role of the immigration attorney?** The immigration attorney must guide the individual investor through the necessary applications, documentation and proof that will be needed to ensure that the I-526 is approved in the 4-6 month average time and the subsequent adjustment of status, work authorization and advance parole are approved. The process will only be a success if it is able to deliver what the investor ultimately wants from the investment, which is lawful permanent residency for themselves and their loved ones. It is therefore of utmost importance that the investor be guided by competent immigration counsel.



If you have any questions regarding your EB-5 investment, please contact attorney Matthew Maiona at (617) 695-2220 or at [matthew@maionaward.com](mailto:matthew@maionaward.com) and he will arrange to meet with you and assist you in planning, researching and developing your investment so that it is a successful business venture.

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