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GREEN CARDS THROUGH INVESTMENT

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For foreign investors looking for freedom and flexibility to live and work in the United States in a way accommodating to their lifestyles, the little-known EB-5 investor category can provide an excellent opportunity to accomplish this goal through the obtaining of Green Cards.

There are essentially two EB-5 programs, i.e. the Regular program and the Regional Center program. In order for an applicant to qualify under the Regular program, the following three basic requirements must be met: investment in a new commercial enterprise; investment of at least $1 million (or $500,000 in certain cases) into the business, and creation of employment for at least 10 full-time U.S. workers.

The investment may consist of the contribution of various forms of capital, including cash, equipment, inventory, property, and other tangible equivalents. An investment amount of $1 million is generally the minimum. However, $500,000 is acceptable if the business is situated in a "targeted" employment area, i.e. one that has experienced unemployment of at least 150 per cent of the national average rate or a rural area, as designated by the U.S. Office of Management and Budget .

The second program within the EB-5 category, i.e. the Regional Center program, is ideal for the retiree or inactive investor due in large part to the "indirect employment" feature of this program. The Regional Center program advantageously removes the 10 full-time employee requirement of the Regular program and substitutes the less-restrictive "indirect employment creation," which allows the investor to qualify by proving a combination of 10 direct

and/or indirect employees who are new to the Regional Center.

The EB-5 policy management requirement is minimal in that the investor can be a limited partner and still qualify as long as the limited partners have a policy making role. Thus, for those who are not interested in day-to-day management or running an active business, Regional Center programs offer a more acceptable inactive form of investment, than do most Regular program investments.

Another advantage of Regional Center programs that adds to the flexibility of this Green Card category is that the investor is not required to live in the place of investment; rather, he or she can live wherever he /she wishes in the United States.

Under mandate by Congress, Regional Center EB-5 petitions are given priorityby CIS (formerly INS) which, among other benefits, often results in a quicker path to approval. Each Regional Center program must be pre-approved by CIS in order to be eligible to qualify for EB-5 Green Cards. The following is a description of a Regional Center program.

- This program generally involves purchasing low-yielding industrial properties with invested funds and converting them into mortgage free higher-value commercial properties, including a hotel, office space, retail shops and storage space. Investors participate as limited partners of a limited partnership, and can earn a monthly return from tenant rentals after property renovation, as well as a share of future appreciation, if any, from the project when sold. Investment periods vary, but cannot end before receipt of the permanent Green Card by the investor.

The procedure for filing an EB-5 Investor Green Card petition is relatively straightforward. The investor must present evidence that traces the funds through bank transfers and other documentation, from the investor directly to the enterprise. The money can be the investors own funds or in the form of a loan or gift, which would allow a parent to gift a son or daughter.

After the investor completes a thorough business and financial due diligence analysis of the viability of the Regional Center business opportunity, the investment is made and a petition is filed by the foreign investor with CIS, requiring CIS to approve that the applicant and the investment are eligible for EB-5 status, which takes an average of 5-6 months.

If the investor is already in the U.S., he or she then applies for a Green Card through CIS. No interview customarily is required, and approval for most cases has been taking approximately 9 months. If the investor resides abroad, an application for the Green Card is generally made at the U.S. Embassy or Consulate in the investor's home country, where an interview is necessary. Approval of the Green Card in this case takes on average also about 12 months.

In either of the above two scenarios, in most Regional Center cases, the entire process generally takes about 14-18 months. This is the situation for most applicants based on the current CIS and State Department Consular processing times, however times may vary depending on the circumstances of each case.

Once CIS approves the investor's Green Card, it is conditional for a period of two years. Conditional Green Card status confers the same rights as the permanent Green Card.

Between 21-24 months after the conditional Green Card has been approved, the investor must reconfirm that the investment has been made or is still in place and that the employment requirement has been fulfilled or maintained. An application to remove the conditional Green Card status is then filed with CIS.

Once the condition has been removed, a full Green Card is granted for permanent resident status. From the time of application for the conditional Green Card until approval of the removal of condition usually takes about 4 years. Thereafter, in an approved Regional Center case, depending on the terms of their agreement, the investment may be sold, and the investor will still maintain the permanent Green Card.

In summary, freedom to live anywhere in the United States, a passive form of investment with no required direct management responsibilities, priority standing within the Immigration process, and an accelerated path to Green Card procurement - all are important factors which make the little-known EB-5 Green Card Regional Center category an ideal investment vehicle for the inactive investor or retiree who wishes to live and work in the United States.

As with other U.S. Immigration visas, applicants also need to take into account U.S. and foreign tax and other business and personal planning considerations.

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