



U.S. Citizenship and Immigration Services

About the EB-5 Visa Classification

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[This page in Simplified Chinese. \(PDF, 170 KB\)](#)

Visa Classification Description

USCIS administers the EB-5 program, created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a program initially enacted as a pilot in 1992, and regularly reauthorized since then, investors may also qualify for EB-5 classification by investing through regional centers designated by USCIS based on proposals for promoting economic growth. On March 23, 2018, the President signed Public Law 115-141 extending the Regional Center Program through Sep. 30, 2018.

USCIS policy on EB-5 adjudications is contained in [Volume 6, Part G of the USCIS Policy Manual](#).

All EB-5 investors must invest in a **new commercial enterprise**, which is a commercial enterprise:

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
 1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
 2. Expanded through the investment so that at least a 40-percent increase in the net worth or number of employees occurs

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust, or
- Other entity, which may be publicly or privately owned.

This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

Note: This definition does not include noncommercial activity such as owning and operating a personal residence.

Job Creation Requirements

An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees.

- For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.
- For a new commercial enterprise located within a regional center, the full-time positions can be created either directly or indirectly by the new commercial enterprise.
 - Direct jobs are those jobs that establish an employer-employee relationship between the new commercial enterprise and the persons it employs.
 - Indirect jobs are those jobs held outside of the new commercial enterprise but that are created as a result of the new commercial enterprise.
- In the case of a troubled business, the EB-5 investor may rely on job maintenance.
 - The investor must show that the number of existing employees is being, or will be, maintained at no less than the pre-investment level for a period of at least 2 years.

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. For purposes 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.

A **qualifying employee** is a U.S. citizen, lawful permanent resident or other immigrant authorized to work in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation. 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 nonimmigrant) or who is not authorized to work in the United States.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the regional center program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly that requires a minimum of 35 working hours per week.

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 even if, when combined, the positions meet the hourly requirement per week.

Jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last at least 2 years are generally not considered intermittent, temporary, seasonal, or transient in nature.

Capital Investment Requirements

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 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. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b) (5) of the Act.

Note: The immigrant investor must establish that he or she is the legal owner of the capital invested. Capital can include the immigrant investor's promise to pay (a promissory note) under certain circumstances.

Required minimum investments are:

- General. The minimum qualifying investment in the United States is \$1 million.

- Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is \$500,000.

A **targeted employment area** is an area that, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

A **rural area** is any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more according to the most recent decennial census of the United States.

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