

## U.S. Investor Green Cards in less than a year

Mark Ivener and Kehrela Hodkinson

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. Since this regulation first became law in 1990, EB-5 case adjudications have gone through several modifications, withdrawals and other hiccups before implementation of the latest statute in 2002.

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 full-time employment for at least 10 full-time U.S. workers.

Additionally, to satisfy CIS' (formerly INS) standards of a bona fide "new commercial enterprise," a business can qualify in one of three ways: investment in a business formed after November 29, 1990; substantial restructure of business formed before November 29, 1990; or substantial expansion of business formed after November 29, 1990.

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 final Regular program requirement is that at least 10 full-time jobs are subsequently created for U.S. workers.

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 employee requirement of the Regular program and substitutes the less-restrictive "indirect employment creation," which allows the investor to qualify for an EB-5 Green Card without hiring 10 people in the company that the investor has invested in. So, a nutshell, under a Regional Center program, the investor can qualify by presenting evidence that 10 jobs will be created throughout the Regional Center economy, typically supported by an economist's report.

The EB-5 management requirement is minimal in that the investor can be a limited partner and still qualify. 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. For example, the investor may invest in a Regional Center in the state of Washington, but choose to live in upstate New York.

*In Print*

ORIGINALLY PUBLISHED IN

**Citywealth**

JANUARY 28, 2006



Mark Ivener



Kehrela Hodkinson

Under mandate by Congress, Regional Center EB-5 petitions are given priority by CIS which, among other benefits, often results in a quicker path to approval. The official CIS definition of a Regional Center is "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment." Each Regional Center program must be pre-approved by CIS in order to be eligible for EB-5 Green Cards. Currently, there are 3 primary CIS approved Regional Center programs available, including:

- A real estate limited partnership program that offers an investment in industrial properties in a specified major city. This program, which was granted CIS designation as a Regional Center in 1996, generally involves purchasing low-yielding warehouse properties with invested funds and converting them into higher-value mixed used properties, including office space, retail shops and storage space. Investors participate as limited partners of a limited partnership, and can earn regular monthly income from tenant

rentals, as well as a share of future appreciation from the project, when sold. Investment periods vary, but cannot end before receipt of the permanent Green Card by the investor.

- A limited partnership program that makes low interest loans to businesses in a specified major city. Business investment and development in this program, a CIS Regional Center designee since 2003, targets industry sectors that demonstrate strong indications of expansion, growing employment needs, and returns on investments. The Regional Center directs its efforts at financing projects and developing enterprises within targeted sectors, including hospitality and tourism, trade, technology, higher education, and transportation. The investment period of this program is 5 years.
- Ownership of 80-acre almond farms in a specified location in California. The investment is used to create a business in California that is 100% owned by the immigrant investor. The business purchases 80 acres of land where almonds are developed, grown and harvested for export. It also purchases raw agricultural stock (almond trees), an irrigation system,

*continued on back*

## U.S. Investor Green Cards in less than a year

*continued from front*

plant nutrients and all necessary harvesting equipment and services to develop the land and export the harvested almonds for profit. The investment period for this program, which received CIS designation as a Regional Center in 2002, is 7 years.

The procedure for obtaining an EB-5 Investor Green Card is relatively straightforward. The investor must produce 5 years of tax returns to substantiate the source of investment funds. The funds can be in the form of a loan or gift, which would allow a parent to gift a son or daughter. Gift taxes, if required in the investor's home country, must be paid. He or she must also present evidence that traces the capital, through bank transfers and other documentation, from the investor directly to the enterprise. This provision of the regulation, which requires clear evidence that the source of funds was procured by legal means, arose from earlier concerns of Congress over money laundering issues.

After the investor completes a thorough business and financial due diligence analysis of the

viability of the business, the investment is made and a petition is filed by the foreign investor with the CIS, requiring CIS to certify that the applicant and the investment are eligible for EB-5 status. The approval of the petition takes, on average, a mere 1-2 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 has been taking approximately 6 months. If the investor resides abroad, an application for the Green Card is generally made at the U.S. Embassy or Consulate of the investor's home country; however, in this case, for Consular processing purposes, an interview is necessary. Approval of the Green Card in this case takes on average about 8-9 months.

In either of the above two scenarios, in most Regional Center cases, the entire process generally takes less than one year. This is the situation for most applicants based on current CIS and State Department Consular processing times.

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 unconditional 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 indefinite permanent resident status and work permission in the United States. From the time the conditional Green Card is approved until approval of the removal of condition usually takes about two and a half years. Thereafter, in approved Regional Center programs, depending on the terms of their agreement, the investment may be sold, and the investor will still maintain the permanent

Green Card. U.S. Citizenship is possible two and a half years later, five years after approval of the conditional Green Card, upon satisfaction of residence and other criteria.

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 category (and the approved Regional Center programs) 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.

Copyright © 2006 Mark Ivener and Kehrela Hodkinson All rights reserved.

Mark Ivener, managing partner of Ivener & Fullmer LLP, a business immigration law firm in Los Angeles, has been practicing law for over 35 years and is the author of 5 books on immigration law and visas. Email: [mark@usworkvisa.com](mailto:mark@usworkvisa.com)

Kehrela Hodkinson, principal of the Hodkinson Law Group, a U.S. immigration law firm in London, has been practicing law for over 25 years and is a frequent speaker on U.S. immigration law in the U.S. and the United Kingdom. Email: [khodkinson@usvisal.com](mailto:khodkinson@usvisal.com)

Ivener & Fullmer LLP is associated with the Hodkinson Law Group in the representation of United Kingdom and European investors wanting to obtain U.S. Green Cards through investment. Web: [www.greencardinvestor.com](http://www.greencardinvestor.com)