

US Investor Visa: Why are Indians lining up for EB-5?

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December 8, 2022



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1 min read . Updated: 09 Dec 2022, 06:50 AM IST **Shilpa Menon**

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The anxiety over visas is very real for many Indian students and professionals in the US. And, as if the lottery system for the H-1B was not bad enough, there is a 15-18 year waiting period to convert it to a green card for Indians.

So, when the US government renewed the popular green card by investment program, known as the EB-5 Visa Program, earlier this year, families who could afford the investment and well understood its significance as a great tool for legacy planning, made a beeline for it immediately.

Applying for the EB-5: What to look for

The application process has several components to it. The most significant part of it is the source of funds analysis. The investor has to demonstrate that the \$800,000 investment has come from legal sources and this needs to be documented painstakingly. Any misses here and you could face a green card denial. Additionally, the funds, if being remitted from India, will need to adhere to Indian regulations, including the Liberalized Remittance Scheme (LRS) and Foreign Exchange Management Act (FEMA).

The second most important component is project selection. Projects are offered by Regional Centers. The first step here would be to examine whether the Regional Center in question has applied for a recertification with the United States Citizenship and Immigration Services (USCIS) and is still valid. While the Regional Center is the holder of the required license, the heavy lifting in terms of the investment management and job creation is often done by an EB-5 fund manager and the developer or project sponsor involved.

Researching the credentials and track record of these entities is essential before deciding to invest with them. Some regional centers may be owned by the company/developer raising capital, and this may create an inherent conflict of interest.

Having a trusted EB-5 fund manager who oversees the capital deployed in the developer's project on your behalf may help solve this problem. The next step would be to evaluate whether the EB-5 project has a concrete business plan, with a healthy capital structure, and a vetted econometrics report.

To be eligible for the green card, the project must create 10 jobs in the US economy per application. The developer should have a proven track record in job-creation, preferably creating many more jobs than required by law. Last, one must evaluate the capital risk in the project. As per regulations, the \$800,000 must be "at risk". However, this does not mean that it needs to be in a risky investment.

EB-5 projects from established players are usually conservatively structured, focusing on capital preservation and job creation. Such projects may yield miniscule returns but do a great job of keeping the capital safe.

Scout for projects with prior EB-5 experience, strong investor protection mechanisms, developer's skin in the game, and the presence of other strong investors or lenders. You may come across projects offering higher returns but it is crucial to understand the kind of risk you are taking.

The investment partner you choose should ideally have a client-oriented, long-term approach, not a mere transactional one, because the EB-5 program is a 5-7 year journey, and much hand-holding is required throughout the period.

The heavy lifting on the source of funds analysis and EB-5 visa application is done by US immigration attorneys. Engage an attorney who is experienced in EB-5 for Indian investors. They should represent you and not be tied to any particular developer, fund manager or regional center.

Although the EB-5 program is one of the fastest routes to gaining a green card, the application process is complex and requires careful execution. Choosing the right partners to help you throughout the entire journey is a crucial first step.

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