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## USCIS Responds to Increased Popularity of Investor Green Card Program with New Guidance, Fees for Regional Center Entrepreneurs

Many foreigners have made an opportunity of the United States' economic downturn of the past three years, but many more still are unaware of the Immigrant Investor Program, also known as 'EB-5', which allows foreigners who invest as little as \$500,000, and create 10 jobs in the United States, to obtain a green card. The prescribed 10,000 per year EB-5 quota has never come close to being used, however, as interest in this program grows, the United States Citizenship and Immigration Services (USCIS) is responding with new forms, fees and substantive rules in an effort to streamline the application process and provide a structure for oversight where it had been lacking. This clearer guidance will hopefully have its intended effect of unleashing the full potential of the EB-5 to infuse the United States economy with billions of dollars in investment and generate thousands of new jobs.

The EB-5 Program was created by the United States Congress in 1990 under Section 203(b)(5) of the Immigration and Nationality Act (INA) to encourage capital investment by foreigners that would stimulate the economy and create jobs. If qualified, foreign investors have the opportunity to obtain lawful permanent residence for themselves, their spouses, and their minor unmarried children.

There are essentially two paths to qualification under the EB-5 category, the Basic Program and the Regional Center (RC) Pilot Program, with 90-95% of EB-5 applications submitted to the USCIS falling into the latter category. A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment. Investor interest is highly skewed in favor of the RC Program for several reasons:

- In contrast to the Basic Program, it allows for *indirect* creation of new jobs, meaning jobs generated for persons working outside the RC (e.g. employees of the producers of materials and services that are used by the RC) count toward satisfying the (10) jobs creation requirement;

- Establishes a platform / structure for investment without burdening each foreign investor with planning, researching and setting up a business (i.e. this is handled by the RC entrepreneur);
- If structured correctly (i.e. through a limited partnership), allows the investor to gain permanent residence even if he/she is only minimally involved in the management of the underlying enterprise.

Both the Basic Program and Regional Center Program require an investment of \$1,000,000 or \$500,000 in a new commercial enterprise located within the US, with the lower threshold being reserved for investments in Targeted Employment Areas (TEAs). TEAs are defined as either: (A) areas with unemployment rates 150% or more of the national rate, or; (B) rural areas, with populations of less than 20,000. In recent years, we have seen a re-distribution of the geographic scope of TEAs, with typically affluent areas becoming eligible as TEAs due to high unemployment.

Until recently, entrepreneurs could propose the establishment of new RCs without the requirement of a USCIS form or filing fee.

As of November 23, 2010 new forms and guidance were released by the USCIS, including the Form I-924, application for RC (used to propose/create an RC, as well as amend an existing RC) that has a \$6230 filing fee, and the fee-less supplement Form I-924A, which will serve as the vehicle for a yearly regional center reporting requirement pursuant to the newly amended 8 CFR 204.6(m)(6). Under this new regulation, each regional center will be required to report its activities for the preceding fiscal year within 90 days of the end of the fiscal year.

A Regional Center application may be filed by a domestic or foreign entrepreneur, however, USCIS approval and designation of an RC does not automatically guarantee individual investors in the center approval of their EB-5 immigrant visa petitions. First, the RC must have capacity for new investors, based on the job creation / economic forecasts outlined in the RC application, which requires 10 full-time jobs be created by each investor. Given that space is available, the foreign investor who intends to participate in the Regional Center Pilot Program must establish his/her EB-5 eligibility by filing Form I-526, along with the necessary documents. Once the I-526 petition is approved, the foreign investor must then file Form I-485, Application for Adjustment of Status. Finally, the alien must file Form I-829 within the 90 day period immediately preceding the two-year anniversary of his / her admission to the United States or adjustment of status as a Conditional Permanent Resident. The purpose of Form I-829 is to remove the conditions for permanent residence and at this stage the USCIS will determine if the financial / employment forecasts in the RC application actually came to fruition. All forms mentioned in this paragraph are affected by the new fee schedule that came into effect on November 23, 2010, increasing the application fees by an average of 10%.

The Regional Center Pilot Program is set to sunset on September 30, 2012, and although it has been extended twice in the past, there is no guarantee of another extension. Therefore, if you are a domestic entrepreneur looking for foreign investment and funding sources or you are a foreigner considering the investment option to a green card, the time to act is now. Our office works closely with regional center entrepreneurs and foreign investors to provide guidance with

the regulatory and statutory framework, as well as the practical issues that arise for a designated and operational Regional Center.

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