

EB-5 IMMIGRANT VISA PROGRAM (CAN I REALLY BUY A GREEN CARD?)

Smarter Way to Cross Blog Archives
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Every now and then, we get a call from a prospective client who has stumbled upon the EB-5 investor green card program.

“Is it true that you can get a green card just by writing a check? Can I really buy a green card?,” they ask.

The EB-5 program has been in existence for more than 20 years but has increased in popularity over the past several years as a source of financing for large development projects. It has been both touted and criticized in the press as an oddity, if not an aberration, in an immigration system that appears to be otherwise family-based or merit-based:

- [“Foreigners and their .5M investments in Buffalo,”](#) *Buffalo Business First*
- [“Looking for Start-up Capital? Try Overseas,”](#) Inc.
- [“In U.S. Visa Program, Money Talks,”](#) *Los Angeles Times*
- [“Psst, You Want to Buy a Green Card? It’ll Cost You \\$500,000,”](#) Southern California Public Radio
- [“The EB-5 Program: Create American Jobs, Get a Green Card,”](#) *Bloomberg Businessweek*

The basic premise of the EB-5 regional center (RC) program seems simple enough. For a \$500,000 investment, an investor and family can achieve lawful permanent residence (green cards). The investor does not have to be employed by the U.S. business, does not have to manage the U.S. business, and does not even have to live in the geographical area of the U.S. business. The investor gets a return on investment during the investment period and a repayment of principal, perhaps at an appreciated value, in the future. But the RC green card process is fraught with many business, legal, and practical issues that need to be understood and addressed from the outset.

What does “EB-5” mean? The immigration laws set out several family-based and employment-based categories for green card eligibility, in no particular order. The investor green card happens to be the fifth one listed in the employment-based (EB) category, hence the name EB-5.

What is a regional center (RC)? An RC is a business that has been designated as such by U.S. Citizenship and Immigration Services (USCIS) through a substantive application process that requires the RC to explain its proposed business model. Designation as a RC does not guarantee that green card applications from investors will be approved, and does not minimize or eliminate risk to the investor.

How many RCs are there? Currently, there are more than 250 RCs competing for EB-5 investors, a ten-fold increase from only a few years ago. Due to the newness of most of the RCs and the long time frame associated with the green card process, very few of the RCs have a proven track record of achieving permanent green cards for their investors, and even fewer have successfully repaid investors their full investment following permanent green card status. [A list of RCs](#) can be found at the USCIS website.

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What is the purpose of an RC? An RC allows investors to pool their resources to provide funding or financing for a project that will create jobs for U.S. workers. The project must create at least 10 full-time jobs, directly or indirectly, per each unit of investment. The standard EB-5 investment requirement is \$1 million per investor, but that amount can be reduced to \$500,000 if the project is located in an area of high unemployment designated as a targeted employment area (TEA). All RCs try to create projects in TEAs. RCs are engaged in all sorts of projects, but most deal with real estate development for commercial use such as hotels, office buildings, shopping malls, and the like. Others include recreational and mixed commercial/residential usage such as ski resorts or golf courses, condominiums, university housing, and assisted living facilities.

What is the nature of investment? An investment into an RC is a purchase of a security under the U.S. Securities laws. (Some RC offerings are promoted and sold wholly outside of the United States and are subject to the less rigorous rules under Regulation S.) The EB-5 laws require that the entire \$500,000 investment go toward the legitimate job-creation purposes of the new commercial enterprise. Marketing fees, sales commissions, and other similar expenses of the RC or affiliates cannot be paid from the \$500,000 investment. For that reason, most RC investments require payment of an additional fee (syndication fee, processing fee, or other name) in the \$30,000-\$50,000 range.

Source of funds. USCIS is concerned about money laundering through the EB-5 program, and requires a full history of the source of funds, including tax returns, bank records, and any other relevant information relating to the financial background of the investor.

Role of the attorney on behalf of the investor. Attorneys are typically not licensed investment advisors or broker-dealers, and cannot recommend, sell, or promote an investment opportunity. Attorneys can assist with the green card application process, which can take several years.

It can take several years? After the initial EB-5 application is approved, the investor (and dependent family members) can apply for conditional two-year green cards. At the end of the two-year term, the investor must apply to remove the conditions by submitting evidence that the required jobs have been created and sustained. Due to lengthy processing times at each step, it can be four to five years or more from the time of the investment before the investor has the permanent green card in hand.