



Important FAQs on EB5 Program

Part I

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EB-5 is often the most often talked upon topic amongst aspiring immigrants. Below are some of the most widely asked questions which we have faced. Learn the answers to them and unfold the truth, myths, and tips before you proceed:

Q - What is the EB-5 Immigration Program?

A - EB-5 stands for Employment Based Immigration 5th Preference. It was introduced in 1990 under the Immigration Act for the purposes of granting Green Card to non-American citizens across the world. USA grants 10,000 visa every year under this program with quota reserved for each country. No other country than China has availed maximum limit. While approvals of US visas through other routes have been stagnant over the years, over 1200 Indians have obtained green card using EB-5 and with 111 alone in 2015.

Q - What are the options to invest under EB-5?

A - There are two main ways – i) The Direct Investment Route, and ii) The Regional Central program. The former is quite cumbersome with an investment of at least \$1million (about Rs 6.6 crore). The Regional Central Investment program is simpler and cheaper with a ticket size of \$5,50,000 (about 3.6 crore). In my opinion, the regional centre program is safe, fast, guaranteed, and certainly more hassle free as compared to the direct investment route.

Q - Is the investment money redeemable?

A - Yes, it is redeemable after 5-7 years. Due-diligence by a skilled advisor or any other qualified person would be helpful in selecting a project which has the capacity to repay or offer an easy exit to investors.

Q - What is the “investor eligibility” norm? Can any and all types of investors being aspiring applicants apply under the EB5 scheme?

A - There is a requirement to be an “accredited investor” in order to gain the eligibility. While this is not seen as an issue, practically for most applicants; however one can’t be oversight to this fundamental requirement. The term “accredited investor” is defined by Regulation D of the Securities Act, which means any investor meeting at least one of the following conditions:

1. any person whose individual net worth (or joint net worth with that person’s spouse, if applicable) at the time of purchase exceeds \$1,000,000; or
2. any natural person who had an individual income in excess of \$200,000 or joint income with that person’s spouse in excess of \$300,000 in each of the two most recent years and who reasonably expects an income in excess of \$300,000 in the current year; or
3. any other “accredited investor” as that term is defined in Regulation D as adopted by the Securities and Exchange Commission; or
4. has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in the Units, and of making an informed investment decision, and does not require the use of a Purchaser Representative.

In some cases, not residing in United States at the time of making application, and which would be the case for a vast majority of applicants, would help you navigate the requirement of investor eligibility, in a different way.

Q - What is one of the biggest & prime reasons for rejection of EB5 application?

A - The most common area identified in our experience, and as also documented by some publishers, is the insufficient documentation apropos the source of funds. At times, the fault is attributable to agents for not being skilled enough to work on the source of funds. An attorney will be able to file only what it is given; so essentially it is the applicant or his local advisor who needs to effectively liaise with the attorney and present documents as needed. It is always better to provide too much information rather than too little information.

Q - From your experience, what is the top advice to potential EB5 applicants?

A - While investing in any project, select a project which has a margin for enough job creations. As some people would know, for every investor, 10 additional qualifying jobs have to be created. However, what most people don't know is that job creations are considered on a first in first out basis. For e.g., if 15 investors invested in a particular project then ideally 150 jobs should be created. Now let's presume, only 120 jobs were created. In this case, the first 12 investors will qualify; however, the last 3 will not qualify. Proper guidance and a comprehensive on-site due-diligence from a skilled consultant are a must.

Q - What are RBI regulations in relation this program?

A - Currently, under the LRS scheme, RBI permits to remit only \$250,000 per person per financial year. However, there are legal ways to plan a full remittance of US\$ 500,000. Your tax consultant can help you navigate through.

Q – Is there any planning required from Income tax perspective while investing under the program?

A – After the enactment of FATCA, US government has made it more than clear that it wishes to tax every penny generated by its green card holders anywhere in the globe. Do note that it does not matter whether you are a provisional or a permanent green card holder, the provisions of income tax of USA would become applicable to you immediately on receipt of the provisional / conditional green card. Most people, literally 90%, are not aware of this. Proper tax planning is required to be done as your entitlement to green card would inevitably attract dual taxation. The DTAA between India & USA can come quite handy to an assessee for getting some relief.

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