



WHITE PAPER ON SOURCE OF FUNDS

EB5 INVESTMENTS

18th July, 2017

The Importance of Source of Funds

'Arranging' for funds to the tune of US\$ 0.5 to US\$ 1 million, and remitting it overseas, would mean nothing if the source of your funds is not set right. In such cases, an applicant would not only lose his opportunity to obtain the citizenship but also lose interest, being an opportunity cost, for his funds would remain blocked for several months in lieu of RFE proceedings. I am writing this article as there are numerous cases, especially from India & China, which fall under this category.

The United States Citizenship and Immigration Services (USCIS) requires that EB-5 investors should be able to prove the following:

(1) Invested capital is "lawful", and

(2) Investor has a "sufficient level of income" that has allowed him/her to accumulate sufficient wealth that would enable the investor to invest funds

Ideally, each of the above conditions would require a mammoth level of explanation, but for the benefit of readers, the quintessential observations on the basis of our experience are summed up in this publication.

Invested capital is “LAWFUL”

The first thought anyone would get from the word ‘lawful’ is as if it refers to legal means of earning income. For instance, monies earned through drug dealing are unlawful and which is quite obvious. As a second example, real estate builder in India may have a net worth that is earned and reflected officially, along with some income which is ‘black’ in nature. Naturally, the official source of income is only what would count.

However, the concept of ‘lawful’ in the eyes of USCIS is not just restricted to black and white as far as the nature of savings apropos income tax or related regulations are concerned. The word lawful can have immense repercussions and must be understood carefully before it is too late and before you receive a RFE or rejection letter from USCIS. One example, which many are still not aware, is the case of obtaining a loan for the purposes of making an investment. Most applicants are of the opinion that if the loans arranged for are secured, then that amount can be utilized for making a lawful investment in relation to their EB5 application. The fact that borrowings have to be secured is an undisputed fact, but what people are failing to realise is that even secured funds may not sustain the test of ‘lawfulness’ in a vast majority of cases. Let us see how this happens:

- Mr. A is an industrialist. He has a huge net worth but hardly any money that is reflected officially. He is a keen applicant because he wants his children to settle down in United States.

- Mr. A is advised to borrow loans by mortgaging his property, popularly known in India as LAP. He accordingly obtains a LAP of Rs. 3 crore by mortgaging his own house from India’s largest private sector bank.

- Mr. A uses the funds to remit abroad for an EB5 investment. Everything goes through successfully.

- The problem comes when the lawyer will ask for a copy of loan agreement. While everything in that loan agreement would be legitimate, there is one thing which could be the show-stopper, which is the purpose for which loan was obtained. The bank will not bother as to where the proceeds have been “end-used”, for them, it is not very critical and nor does any Indian bank have the bandwidth to track end-proceeds. However, the immigration attorney will invariable ask for a copy, and they will inevitably raise a concern as to why is the loan stated to have been obtained for X use whereas the end use is Y.

- This is how the entire application gets defunct. Not only will you lose the opportunity but also the time and effort in the mammoth hassle of sending and receiving the funds back.

Narrating more examples would be beyond the scope of this White Paper, but what every applicant should stay guided is that 'lawful' doesn't just mean legally earned or obtained money. It also refers to the credibility of the source that can be demonstrated.

Tracing Investor's sufficient "Level of Income"

Further to the requirement of lawfulness narrated in previous paragraphs, the applicant also needs to demonstrate that not only is his investment lawful but also that it is streaming from his own investments corroborating with his historical level of income. To justify this requirement, any Chartered Accountant who also has the requisite knowledge on related requirements of USCIS, can guide you for creating papers on the manner in which your life-time incomes are streaming down to accumulation of the proposed investment. For him to achieve this, you should submit all (or as many as you can) of the various types of documentary evidence relating to source of funds for both the investor and the investor's spouse and from any additional sources such as banks and relatives in case all or part of the funds were obtained through a loan.

Following documents would be needed by your Chartered Accountant cum EB5 consultant:

- Income tax returns whether individual and/or business;
- Financial statements audited or unaudited by an Indian Chartered Accountant;
- Copies of all investment and/or stock brokerage accounts;
- Bank statements;
- Business/Company related documents;
- Real Estate related documents such as purchase and sale deeds and mortgage documents (along with translations regional language to English);
- Employment related documents;
- Any documents relating to inheritances received;
- Gifts - all documents relating to gifts;
- Loans - all loan documents

In addition to documentary proof of the lawful source of the EB-5 investor's funds, the USCIS insists on documentation that links the invested funds to the investor and shows the funds were in the investor's name, control and/or possession. It is crucial to be able to provide every document necessary to trace the invested funds from their source overseas (or in the U.S. if the funds are remitted from the U.S.) to the investment in the U.S. An Indian EB-5 investor can provide the following documents to meet this requirement:

- Bank Wire transfers receipts;
- Deposit receipts;
- Letter from the escrow bank confirming funds transfer into the RC escrow account;
- Any RBI documents relating to the Liberalised Remittance Scheme

- Bank statements showing withdrawal of the funds from one account and deposit of funds in another account;

An Indian EB-5 investor should be extremely meticulous for each and every document that is being submitted to the USCIS in relation to EB-5 application.

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