

THE NEED FOR PROFESSIONAL SERVICES IN THE EB-5 PROCESSES

Individuals or entities wanting to put together EB-5 investors and EB-5 eligible capital projects face several hurdles. First, although not required, it is usually advantageous for them to become a regional center. The U.S. Citizenship and Immigration Service (USCIS) interpretation of the requirements for regional center approval [8 C.F.R. § 204.6 (m)] requires an applicant to submit a proposal that:

1. Clearly describes how the regional focuses on a contiguous region of the U.S. and how it will promote economic growth.
2. Provides in verifiable detail how jobs will be created.
3. Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center as well as a description of the promotional efforts planned by the applicant.
4. Contains a detailed description regarding the manner in which the regional center will have a positive impact on the region as reflected by such factors as increased household earnings, greater demand for business services, and construction.
5. Provides analyses supported by economically or statistically valid forecasting tools, including feasibility studies, market analyses, and multiplier tables.

From these requirements it seems clear that a regional center application needs the services of an economist/demographer/financial analyst. However the application process is essentially an administrative process in which the USCIS interprets federal law. Thus the applicant will benefit from the advice and direction of an immigration lawyer familiar with the process and the USCIS interpretation of federal law.

Also, as part of regional center application requirements 2 and 5 above, a sample EB-5 eligible capital project must be described to demonstrate its feasibility as well as its economic and job creation impacts. If possible, and to streamline its approval process, this capital project, should be one for which the applicant is currently considering recruiting EB-5 investors. Accordingly, its site selection process should have the involvement of a real estate professional, and the construction estimates should have the involvement of a construction management professional.

In order for foreign investors to reap the full benefits of their capital investment they must petition for temporary immigrant status. Then, within two years of being approved as a temporary immigrant, the EB-5 investor must

petition the USCIS to remove the conditions that made their status temporary. Although each of these hurdles directly affects the EB-5 investor, meeting these requirements is usually the responsibility of the individual or entity proposing the investment projects. Because of their complexity, meeting USCIS requirements usually requires the services of an economist, an immigration lawyer, and a real estate and construction management professional. As described below, it can significantly improve the efficiency of the approval processes if these professionals are used to working together and communicate well with each other.

Those foreign investors wanting to obtain permanent resident status in the U.S. must file an I-525 form (Petition by Alien Entrepreneur) with the USCIS in order to be granted temporary immigration status. The evidence that the USCIS requires be submitted with the I-525 form includes:

1. Evidence the investment will result in the establishment of a lawful new business entity or cause a substantial increase in the net worth or number of employees of an existing business;
2. Evidence, if applicable, that the enterprise is located in a high unemployment or rural area;
3. Evidence that the actual capital investment has been or will be made;
4. Evidence that the invested capital was obtained through lawful means;
5. Evidence that the enterprise will create 10 full-time jobs within the next 2 years; and
6. Evidence that the investor is or will be engaged in the management of the enterprise.

Because what is and is not considered evidence is not always clear and the application process is essentially a legal one, an I-526 application requires the assistance of an immigration lawyer experienced in the EB-5 processes. Also a comprehensive business plan and impact analysis of each separate capital project must be undertaken and submitted with the I-526 application of each investor. Thus the I-526 application process also requires the assistance of an economic/demographic/financial analysis professional.

Finally, the last step in obtaining permanent immigrant status, the filing of USCIS Form I-829 to remove the temporary immigration status, requires that the EB-5 investor demonstrate within 2 years of the approval of the I-526 application that the enterprise is operating and the projected economic and employment impact of the enterprise in which the investment was made are met. Thus, it is

very important that the site and construction cost estimates of the comprehensive business plan and economic impact analysis associated with the regional center and I-526 application processes are correct. This is best achieved by the input of a real estate and construction management professional.

The economic/demographic/financial professionals at TW+A Research, the immigration lawyers at Hsu Law, and the real estate and construction management professionals at Prime Group Construction all have extensive experience in the EB-5 process and in working together on EB-5 related applications. Thus working together they can provide a potential EB-5 entity the best service available.