



Choosing the Optimal Path for Permanent Residency in the US: Understanding the Direct EB-5

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Kate Kalmykov co-chairs Greenberg Traurig's Immigration & Compliance Practice. She focuses her practice on business immigration and compliance. She represents clients in a wide-range of employment based immigrant and non-immigrant visa matters including students, trainees, professionals, managers and executives, artists and entertainers, treaty investors and traders, persons of extraordinary ability and immigrant investors.

Kate has deep experience working on EB-5 immigrant investor matters. She regularly works with developers across a variety of industries, as well as private equity funds on developing new projects that qualify for EB-5 investments. This includes creation of new Regional Centers, having projects adopted by existing Regional Centers or through pooled individual EB-5 petitions. For existing Regional Centers, Kate regularly helps to prepare amendment filings, file exemplar petitions, address removal of conditions issues and ensure that they develop an internal program for ongoing compliance with applicable immigration regulations and guidance. She also counsels foreign nationals on obtaining greencards through either individual or Regional Center EB-5 investments, as well as issues related to I-829 Removal of Conditions.



Patrick Findaro

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Patrick is the Managing Director of Visa Franchise, the leading advisor for identifying and analyzing U.S. businesses eligible for U.S. investor visas (E-2 & EB-5). As Managing Partner, Patrick oversees sales, marketing, and strategic relationships for Visa Franchise. Patrick's experience with franchises and investor visas adds significant value to foreign nationals seeking investments in the United States.

Patrick and his team manage an otherwise onerous and bureaucratic process of immigrating through investment by partnering with trusted advisors and established franchisors. Moreover, his experience in advising high-net worth individuals on an array of investments enables Patrick to provide informative market & financial analysis for prospective franchisees. 100,000+ investors have watch his YouTube videos, listened to his podcast episodes and read his articles.

Patrick started his career at JPMorgan's headquarters in New York City and his last role was as the sole analyst of a \$2 billion+ Brazilian credit portfolio. He later worked in franchise private equity and emerging markets consulting before co-founding Visa Franchise in 2015 with his brother, Jack.

After growing up in Washington D.C., Patrick graduated from Colby College in International Economic Policy and played on the lacrosse team. Through extensive studies in Brazil and Argentina, Patrick has mastered both a fluency in Portuguese and working knowledge of Spanish.

Direct EB-5 Petitions

- “Direct EB-5” (not regional center based –permanent program) – *e.g.*, business start-up, acquisition, investment in existing business (such as E-2)
- Investment in new commercial enterprise (NCE) – formed after 11/29/1990
- Investment amount
- Source(s) of funds – must be lawful, also thoroughly documented and traced
- Nature of investment – must be equity contribution (not loan)
 - “At risk” – subject to loss or gain, funds cannot sit idle, no promise of return of or return on capital
- Job creation – cornerstone of EB-5 (10 jobs)
 - Jobs must be permanent, full-time (35 hrs/wk) for US Workers
 - “Troubled business” exception – maintain all jobs at time of existence, min. of 10 jobs.

EB-5 Regional Center vs. EB-5 Direct Program – what is the difference?

- SPVs and pooled investment vehicles vs. equity investment
- How to count Jobs
- How to meet 829 requirements
- Permanent in the law

EB-5 Reform Act of 2022

- Previous EB-5 Regional Center (“RC”) law expired as of June 30, 2021
 - Direct EB-5 Program did not lapse; was not temporary
- USCIS and the State Department paused EB-5 RC adjudication as of July 1, 2021; increased interest in Direct EB-5 Program
- March 15, 2022, President Biden signed into law the EB-5 Reform and Integrity Act of 2022, Section 2, Division BB of the Consolidated Appropriations Act of 2022
 - Affected both Regional Center EB-5 Petitions and Direct EB-5 Petitions

EB-5 Reform Act of 2022 – Investments

- Made sweeping change to EB-5 law
 - Direct can no longer pool investment
- Investment Amounts:
 - \$800,000 for a Targeted Employment Area (“TEA”)
 - \$1,050,000 for a non-TEA investment
 - On Jan. 1, 2027, and every five years thereafter, investment amounts adjust for inflation

EB-5 Reform Act of 2022 - TEAs

- What counts as a TEA now?
- High Unemployment Area - Project must be located in a census tract – or any “contiguous” census tracts that “touch” the project’s tract – where average unemployment rate for the tracts is 150% of the national average unemployment rate
- Rural Project - In areas outside a Metropolitan Statistical area, or within the outer boundary of any city or town with a population of 20,000 or more (No change from prior law)
 - Priority Processing for Rural Projects, but what does this mean?
- Only USCIS can determine a TEA now, no more State designations – through I-526 petition approval

EB-5 Reform Act of 2022 – Visa Set Asides

- Visa Set Asides: Set-asides are a percentage of the 10,000 EB-5 visas available every year
- 20% for rural projects
- 10% for distressed urban area projects
- 2% for infrastructure projects
- Unused visas “carry over” in the same category in the immediately following year
- Unused visas in any category made generally available for any project, in the year immediately following the “carry-over” year

EB-5 Reform Act of 2022 – Source of Funds

- Gifts remain OK, but a gift must be fully sourced and traced (same as previous law)
- Unsecured loans are OK, but if the loan comes from a source that is not a licensed banking or loan institution, then the loan must be fully sourced (i.e. third party funds must be sourced)
- Must source any administrative fees charged by the EB-5 Investment

EB-5 Reform Act of 2022 – Other Changes

- Concurrent Filing of Form I-485: Investors can **concurrently** file their I-526 petitions (showing EB-5 compliance and investment) and their I-485 petitions (application for a “conditional” green card, which adjusts status from a “non-immigrant” to a conditional permanent resident if a visa is available). Issues:
 - Priority Date must be current
 - Nonimmigrant Status Issues + Date of Last Entry
 - Where is the Principal Applicant/Investor? When can dependents file?
 - Investors outside the U.S. must Consular Process after I-526 approval

Questions?

