

EB-5 and the appeal of residency in the United States



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EB-5 and the Regional Center Program in particular has been in the news a lot of late, with many changes happening. So where do things stand today?

Just to take a step back and give some basics on EB-5, this is a Green Card option in the United States for clients who make an investment in the US that will create jobs. In terms of numbers, over US\$37.4 billion in foreign direct investment has been injected in the US economy through EB-5 since 2008. The EB-5 Green Card option allows a client and his or her immediate family members, including children under the age of 21, to become Green Card holders. This allows for easier access to top schools and universities in the US as well as a leg up in the job market, which we can touch upon later.

EB-5 has proven very popular, particularly with high-net-worth clients in Southeast Asia and the Middle East. Today, EB-5 is in full swing and we are seeing a significant increase in interest in this option from clients who seek a foothold in the US. That's because we are entering a period of stability and predictability in EB-5 after many years of changes in minimum investment amount and freezes of the Regional Center Program.

You mentioned stability and predictability. Could you please elaborate?

In March of this year, the US Congress passed, and President Biden signed a bill that reformed the Regional Center Program, which is the most popular vehicle for investors seeking a Green Card in the US. Now, the bill, known as the RIA, will authorise the Regional Center for five years through 2027 and set the minimum investment amount to US\$800,000. Now, prior to that, the investment amount had yo-yoed from US\$500,000 to US\$900,000 and back down to US\$500,000. Additionally, the Regional Center Program was reauthorised for very short time periods, sometimes as few as a couple of weeks. So, the long-term reauthorisation and visibility as to investment amount are welcome changes.

Additionally, the RIA added important new benefits for clients seeking a Green Card. First, the RIA created new subcategories of EB-5, known as "visa set asides", for investment in rural areas and economically depressed areas in

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the US. By making an investment in a job-creating enterprise located in one of these areas, a client can skip any waiting list that may already exist. This is particularly salient for clients from China, India, and Vietnam. Also, for clients interested in remaining in the US, a new process has been implemented whereby those clients can apply for their Green Cards from inside the US. This is a big benefit for students or professionals who are already in the US and who seek to stay in the United States while they await their Green Card.

Finally, and probably most importantly, the RIA created significant new protection for clients seeking Green Cards through EB-5. For example, Regional Centers must now either provide clients with audited financial statements or use a third-party fund administrator for all EB-5 investor funds. And many more disclosures must be made to clients by Regional Centers before the clients invest.

What types of investments qualify for EB-5?

These are passive investments, typically in a firm structure, and almost always involving new construction or manufacturing. That's because of the job creation element in EB-5, namely that each investor must create 10 new jobs in the US. And new construction and manufacturing generates a lot of jobs. This means that a simple investment of US\$800,000 in a stock market instrument or real estate will not qualify the client for EB-5. The entities that act as funds in EB-5 are called Regional Centers, and as I indicated, this is where the

vast majority of clients invest for EB-5. Regional Centers are licensed by federal government, but the US Government does not participate directly by sponsoring the Regional Centers itself. I would also highlight that this is not a donation play model. EB-5 clients can expect the return of their US\$800,000, usually after five to seven years. Selecting the right Regional Center and the right project to invest into is thus all the more important. Both the client's Green Card and investment are in the balance.

Why do clients seek out a Green Card in the United States?

Hubbis is a wealth management platform and community, so we can touch upon the most relevant aspect, which is money. The dollar remained the dominant global reserve currency because of the US's very large economy, deep and liquid private financial market, and the country's strong protection of property rights. These are all attractive elements to our client base here at Henley. Additionally, many clients look at EB-5 on behalf of their children. By obtaining a Green Card for their kids, clients can really set them up for success in the most dynamic economy on the globe. Going to the top university and competing for sought-after jobs after graduation becomes much easier with a Green Card in hand. Employers don't have to sponsor Green Card holders for visas, meaning one less hurdle when applying for a dream job.

The EB-5 Program also ranks well on Henley's Residence Program Index in certain key areas of interest to clients. For example, our research indicates

that in terms of compliance measures, this is the top residence by investment program. The EB-5 Program also ranks quite highly in terms of quality of life and time to citizenship. US citizenship requirements also rank highly, as does the US passport on the Henley Passport Index. And EB-5 indeed provides a path to citizenship should that be of interest to clients.

Some misconceptions exist about obtaining a Green Card and physical presence requirement in the US. Clients frequently say, "Okay, I want a Green Card, but I don't want to spend six months out of the year in the US." And we tell them, "Well, that's fine." We work with partners on the ground in the United States who can help our clients maintain their immigration status in the US while still maintaining their busy personal and professional lives outside the US without being hampered by overly burdensome physical presence requirements.

Are you saying that, for the time being at least, the EB-5 Program is here to stay?

That's absolutely right. USCIS, the federal agency that regulates the EB-5 and the Regional Center Program, initially took a position that the RIA deauthorised all Regional Centers. That was a very problematic approach and several Regional Centers sued the government in federal court. That litigation recently settled and the result is that the Regional Center Program is completely back online and, as I mentioned previously, we have seen a serious increase in demand for this Green Card by investment option. ■

