

## **Investing in the U.S.: A Solution for South African Immigrants**

**By H. Ronald Klasko**

The U.S. immigration system has traditionally not been an ideal fit for South African businessmen and investors who want to relocate to the U.S. Many countries have investment treaties that enable their nationals to obtain treaty investor visa status and promptly relocate to the U.S. based upon their investments. South Africa does not.

Happily, there is now a solution for wealthy South Africans who want to immigrate to the U.S. The solution is called EB-5. Very well known and wildly popular in Asia, this program has only recently come to the attention of many in the South African community.

There are two options for investors who want to obtain green cards for themselves and their family members through the EB-5 program. If the investor wants to start his own business in the U.S., the investment must be either \$500,000 or \$1,000,000 (depending upon the geographical area of the investment), and the business must directly employ 10 full time U.S. workers. This program has proven to be of very limited popularity.

The option that is chosen by more than 95% of investors is the “regional center EB-5” program.

This program enables a wealthy foreign national to obtain a green card with an investment in a construction or export-related project within a government-approved regional center, opening the door to eventual U.S. citizenship. The advantages of this program are that the investor does not need to be employed in the U.S., can live anywhere in the U.S., can relocate his family to the U.S., can buy property in the U.S. and can travel internationally.

Here’s how it works: The U.S. government has approved about 80 regional centers, which are business models or development projects in specified geographical areas and industries that economists certify will create significant employment. Examples include hotels, office buildings, condominiums and limited partnerships providing credit to cash-starved enterprises. The investor must invest \$500,000 (or \$1 million in some of the regional centers), which usually cannot be redeemed for at least five years. The money must be utilized by the limited partnership or other commercial enterprise in a project that is projectal to create, directly or indirectly, at least ten full-time jobs for U.S. workers for every investor in the project.

---

H. Ronald (“Ron”) Klasko ([rklasko@klaskolaw.com](mailto:rklasko@klaskolaw.com)), a former National President of the American Immigration Lawyers Association, presently chairs the EB-5 Committee of that organization. He has been practicing U.S. immigration law for over 30 years.

This is not a program for investors who wish to keep the source of their wealth confidential. While the investor does not need to document the source of all his assets, he does need to provide detailed documentation of the lawful source of the money being invested. While in some cases tax returns may be sufficient, more substantial documentation will be required where the source of the wealth does not appear on tax returns, such as documentation of real estate transactions, investment gains, inheritance, gifts and corporate dividends.

Assuming all of the legal requirements are met, the investor is able to obtain a U.S. green card – often in one year or less. It is important to note that this green card is conditional and has a two-year validity. Before the end of the two years, the investor must file a “Petition to Remove Conditions” to satisfy the U.S. Immigration Service that the investment has been sustained and not withdrawn and that the investment project described by the regional center has actually taken place. Upon approval of the conditional resident’s removal petition, the investor gets a permanent green card. U.S. citizenship is optional, but can be requested five years after the investor obtains his first green card.

The process of obtaining conditional permanent residence occurs in two steps. The first step is the EB-5 petition, which includes documentation of the project in which the investment is made and an economist’s report showing how the investment will create not only direct employment in the project but also indirect or induced employment in the geographical area. In addition, the investor must submit detailed documentation regarding the lawful source of the invested funds and documentation tracing the funds from the investor’s account to the account of the regional center. The normal processing time for the EB-5 petition is approximately three to six months. Upon approval of the petition, the investor can apply for an immigrant visa (green card) at the U.S. Consulate in Johannesburg (or at USCIS if the investor is in legal status in the U.S.). That process may take another four to eight months on average.

Upon approval of the immigrant visa, the investor is able to enter the U.S. as a conditional permanent resident. As a conditional permanent resident, the investor is free to live in the U.S. year round or travel in and out of the U.S. as desired. However, he must maintain a residence in the United States.

At the same time the investor obtains a green card, his spouse and any unmarried children under the age of 21 can also obtain green cards. With these, the spouse and children can work, study or travel as they wish. Generally, in-state tuition is available.

As with any government program, there are many traps for the unwary. The investment in the regional center project is an at-risk investment in a security, which requires the investor to have appropriate counsel regarding issues such as security of the investment, rate of return, expected date of return, feasibility of the project, etc. In addition, U.S. permanent residence may create taxation on worldwide income for which the investor needs appropriate tax advice. Finally, economic conditions may affect the viability and time frame of the anticipated project and the resultant creation of jobs.

In addition to financial and tax advisors, the investor is well advised to work with a U.S. immigration attorney who is experienced in dealing with regional center EB-5 cases. Among other things, such an attorney can assist in helping the investor avoid potential land mines that exist in this program. In addition, the experienced EB-5 attorney should be able to tell the investor which regional centers have a long track record of immigration success and which have had no successful petitions whatsoever. Typically, experienced EB-5 immigration counsel can provide a reasonable number of regional centers

with which the attorney has familiarity regarding immigration-related issues and approval history. The financial and tax advisors would then perform due diligence on the specified regional centers in order to advise the investor on all financial aspects of the investment.

Our website, [www.eb5immigration.com](http://www.eb5immigration.com), provides a wealth of information regarding this program. Anyone who wishes to schedule a consultation to discuss this program and whether it fits his or her own individual needs can also request a consultation through this website.