

THE UNITED STATES EB-5 IMMIGRANT INVESTOR VISA PROGRAM

For many Chinese persons, immigration to the United States is viewed as an impossible dream. In fact, there are many opportunities for qualified Chinese persons to immigrate to the United States. One program available for Chinese persons to immigrate to the United States is the United States EB-5 immigrant investor visa program (the “EB-5 Program”).

Concept: Basic Requirements

The concept of the EB-5 Program is that certain qualified investments will entitle the investor to receive a visa for “permanent resident” status (“green card”) in the United States. Thus, while other visa programs are based on such factors as a person’s family relationship, special ability, or employment status, the EB-5 Program specifically requires that a person make an investment in the United States.

The EB-5 Program has 3 basic requirements. First, the investment must be made in connection with establishing a “new commercial enterprise”. For purposes of the EB-5 Program, a “new commercial enterprise” can be established by (i) creating an original business, (ii) purchasing an existing business and simultaneously or subsequently restructuring or reorganizing the business such that a “new commercial enterprise” results, or (iii) expanding an existing business by 140 percent of the pre-investment number of jobs or net worth, or retaining all existing jobs in a “troubled business” (a business that has lost 20 percent of its net worth over the past 12 to 24 months). Second, the “new commercial enterprise” must “benefit the United States economy” and fulfill an “employment” requirement – (i) create full-time employment for not fewer than 10 qualified individuals, or (ii) with respect to a “troubled business” (as described above), maintain the number of existing employees at no less than the pre-investment level for a period of at least two years. Third, the investment must meet certain dollar amount and possibly “location” standards. These dollar amount and “location” standards in effect create 3 different ways for persons to qualify for a visa under the EB-5 Program – the “\$500,000 Regional Center EB-5 Program” (described below), the “\$500,000 Targeted Employment Area EB-5 Program” (described below), and the “\$1,000,000 EB-5 Program” (described below).

\$500,000 Regional Center EB-5 Program

The “\$500,000 Regional Center EB-5 Program” has both a dollar amount standard and a “location” standard – (i) the investment must be in the amount of at least \$500,000 (U.S.), and (ii) it must be invested in a designated “regional center”. The United States Citizenship and Immigration Services (“USCIS”) has designated certain areas throughout the United States as permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program.

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State or local government agencies and private business then create specific investments within these “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program.

At present, the following are permitted “regional centers”, and their possible investments, for purposes of the \$500,000 Regional Center EB-5 Program:

- a) California Consortium for Agricultural Export, located in 9 counties in the “San Joaquin Valley” in central California. Possible investments – Miscellaneous agricultural and manufacturing projects;
- b) Philadelphia Industrial Development Corporation, located in Philadelphia County, Pennsylvania. Possible investments – Miscellaneous projects;
- c) South Dakota International Business Institute Dairy Economic Development Region, located in 44 rural counties in eastern South Dakota. Possible investments – Dairy farms and beef processing plants;
- d) Gateway Freedom Fund/Golden Rainbow Freedom Fund, located in Jackson County, Oregon and Seattle, Washington. Possible investments – Air and ocean cargo facilities, warehouses, and miscellaneous manufacturing projects;
- e) Iowa Department of Economic Development, located in 77 rural and small urban counties in Iowa. Possible investments – Dairy farming;
- f) Capital Area Regional Center, located in Washington, D.C., part of Maryland, and part of Virginia. Possible investments – Real estate projects;
- g) Mayor’s Office of Economic Development, located in New Orleans, Louisiana. Possible investments – Miscellaneous projects;
- h) Whatcom Opportunities Regional Center, Inc., located in Whatcom County, Washington. Possible investments – Assisted living facilities for the elderly;
- i) Vermont Agency of Commerce and Community Development, located in Vermont. Possible investments – Export-related companies, and tourism, hospitality and commercial resorts development;
- j) Pennsylvania Department of Community & Economic Development, located in 23 counties and other areas in western Pennsylvania. Possible investments – Miscellaneous projects;

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- k) CMB Export LLC, located in the counties of Sacramento, San Bernadino, and Riverside, California. Possible investments – Development of former military base areas, and export activities;
- l) Global Century Development Group I, LP, located in Houston, Texas (“Chinatown” area). Possible investments – Financing and developing commercial and mixed-use real estate;
- m) Metropolitan Milwaukee Association of Commerce, located in 7 counties in southeastern Wisconsin. Possible investments – Miscellaneous projects;
- n) Alabama Center for Foreign Investment Regional Center, located in Alabama. Possible investments – Miscellaneous projects;
- o) Kansas Biofuel Regional Center, LLC, located in 21 counties in southwestern Kansas. Possible investments – Fuel grade ethanol production facilities;
- p) Southwest Biofuels Regional Center, LLC, located in 40 counties in northwestern Texas, and 9 counties in western Oklahoma. Possible investments - Fuel grade ethanol production facilities;
- q) Unibex Global Corporation, located in North Las Vegas, Nevada. Possible investments – Miscellaneous projects; and
- r) Aero-Space Port International Group, located at Grand County International Airport, in Moses Lake, Washington. Possible investments – International air cargo facilities.

The USCIS will update the list of permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program from time to time.

The \$500,000 Regional Center EB-5 Program has the advantage of simplicity. The State or local government agencies and private business that create specific investments within the permitted “regional centers” for purposes of the \$500,000 Regional Center EB-5 Program generally specifically structure these investments to satisfy both the “new commercial enterprise” requirement (described above) and the “employment” requirement (described above) of the EB-5 Program. Thus, immigrants in the \$500,000 Regional Center EB-5 Program generally do not have to be concerned with these 2 requirements. On the other hand, the investments in the \$500,000 Regional Center EB-5 Program are generally “passive” investments, managed by other persons. Thus, the \$500,000 Regional Center EB-5 Program may not be appropriate for immigrants looking to “actively manage” on their own their investments.

\$500,000 Targeted Employment Area EB-5 Program

The “\$500,000 Targeted Employment Area EB-5 Program” is similar to the \$500,000 Regional Center EB-5 Program in that the immigrant also must invest at least \$500,000 (U.S.). However, instead of investing in a designated “regional center”, under the \$500,000 Targeted Employment Area EB-5 Program, the investment must be made in a “targeted employment area”. The term, “targeted employment area”, refers to an area that has experienced unemployment of at least 150 percent of the national average rate or a rural area as designated by the United States Office of Management and Budget.

The \$500,000 Targeted Employment Area EB-5 Program does offer immigrants the opportunity to “actively manage” on their own their investments. However, because it requires that immigrants independently satisfy on their own both the “new commercial enterprise” requirement (described above) and the “employment” requirement (described above) of the EB-5 Program, and because “targeted employment areas” are generally areas of poor economic growth and development, the \$500,000 Targeted Employment Area EB-5 Program has been infrequently utilized.

\$1,000,000 EB-5 Program

The “\$1,000,000 EB-5 Program” requires a greater dollar amount of investment than either the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program – a minimum investment of \$1,000,000 (U.S.). The \$1,000,000 EB-5 Program also offers greater “flexibility” than either the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program because there is no “location” requirement for the investment; thus, the investment need not be made in either a permitted “regional center” or a “targeted employment area”.

Because the investment in the \$1,000,000 EB-5 Program can be made at any location in the United States, investments in the \$1,000,000 EB-5 Program are potentially subject to better economic returns than are investments in the \$500,000 Regional Center EB-5 Program or the \$500,000 Targeted Employment Area EB-5 Program. This advantage must be weighed against the 2 main disadvantages of the \$1,000,000 EB-5 Program – (i) higher minimum investment, and (ii) immigrants must independently satisfy on their own both the “new commercial enterprise” requirement (described above) and the “employment” requirement (described above) of the EB-5 Program - in comparing it with the \$500,000 Regional Center EB-5 Program and the \$500,000 Targeted Employment Area EB-5 Program.

Other Considerations

In contemplating any EB-5 Program investment, immigrants should also consider the following:

i) Under the EB-5 Program, 10,000 visas per year are available to qualified individuals (of these 10,000 visas available annually, 5,000 visas per year are specifically available under the \$500,000 Regional Center EB-5 Program). Fortunately, at present, unlike for other United States visa categories, there are no quota backlogs under the EB-5 Program.

ii) Unlike for other United States visa categories, no sponsorship of the immigrant is required under the EB-5 Program.

iii) With respect to the USCIS, the EB-5 Program process consists of 2 steps. First, Form I-526 is filed to establish “conditional resident” status. Second, Form I-829 is filed within 90 days before the second anniversary of the “conditional resident” status to establish “permanent resident” status.

iv) As it must be established that the funds being invested under the EB-5 Program were legally acquired, the immigrant must provide information concerning the source of the investment.

v) Once the immigrant has qualified for a visa under the EB-5 Program, the immigrant’s spouse and unmarried children under age 21 can also file for visas.

vi) Investment returns, and terms of investment, will vary from investment to investment under the EB-5 Program.

vii) One consequence of “permanent resident” status is that the immigrant will then become subject to United States taxation on worldwide income.

viii) The \$500,000 Regional Center EB-5 Program is a “pilot program” which will expire in September, 2008, unless if reinstated (which is possible). Thus, immigrants interested in the \$500,000 Regional Center EB-5 Program are advised to proceed with their investment today before any such expiration of the \$500,000 Regional Center EB-5 Program.

Chuhak & Tecson, P.C. and the EB-5 Program

As part of its “Welcome to USA” program, and other immigration law related services, Chuhak & Tecson, P.C. has assisted many immigrants from China and other countries with the EB-5 Program. In particular, Chuhak & Tecson, P.C. has represented many immigrants from

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China and other countries in obtaining visas under the \$500,000 Regional Center EB-5 Program, working with investments in many of the above-described permitted “regional centers” (including without limitation, the California Consortium for Agricultural Export, Philadelphia Industrial Development Corporation, South Dakota International Business Institute Dairy Economic Development Region, Gateway Freedom Fund/Golden Rainbow Freedom Fund, Capital Area Regional Center, Mayor’s Office of Economic Development (New Orleans, Louisiana), Whatcom Opportunities Regional Center, Inc., Vermont Agency of Commerce and Community Development, Pennsylvania Department of Community & Economic Development, CMB Export, LLC, Metropolitan Milwaukee Association of Commerce, and Alabama Center for Foreign Investment Regional Center permitted “regional centers”).

Gary J. Stern is the principal attorney at Chuhak & Tecson, P.C. who works on the EB-5 Program. Gary is a member of the American Immigration Lawyers Association, the China Committee and Immigration & Naturalization Committee of the International Law Section of the American Bar Association, the International & Immigration Law Section of the Illinois State Bar Association, and the Immigration & Nationality Law Committee and International & Foreign Law Committee of the Chicago Bar Association. Gary has been a practicing attorney for nearly 25 years. Gary received his B.A. degree (cum laude) from Cornell University and his J.D. degree from the University of Chicago. Gary is a member of Phi Beta Kappa.

Chuhak & Tecson, P.C. charges a flat fee of \$30,000.00 (U.S.) per client for representation in connection with the \$500,000 Regional Center EB-5 Program. This flat fee is separate from and in addition to the “investment/syndication” fees charged by each permitted “regional center” in connection with the \$500,000 Regional Center EB-5 Program (these “investment/syndication” fees vary from investment to investment, but generally are approximately between \$30,000.00 (U.S.) and \$60,000.00 (U.S.) per client). Chuhak & Tecson, P.C. charges a flat fee of \$50,000.00 (U.S.) per client for representation in connection with the \$500,000 Targeted Employment Area EB-5 Program or the \$1,000,000 EB-5 Program. This flat fee is separate from and in addition to any fees charged for services rendered in connection with finding a suitable investment for the client in the \$500,000 Targeted Employment Area EB-5 Program or the \$1,000,000 EB-5 Program (if the client requests performance of this service). In each case, additional fees will be charged for services rendered in connection with monitoring any investment for the client after the visa is issued (if the client requests performance of this service).

Chuhak & Tecson, P.C. can assist Chinese persons to receive a visa for “permanent resident” status (“green card”) in the United States under the EB-5 Program. If you have any questions concerning the EB-5 Program, or want to make any investment under the EB-5 Program, please contact Gary J. Stern (in our Chicago, United States office), by E-Mail at gstern@chuhak.com, or by telephone at 312-855-4604, or Jason Zheng (in our Shanghai, China office), by telephone at 86-21-6288 6831.