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EB-5 Qualifications:

1. Person must have invested or is in the process of investing at least \$1,050,000 dollars or at least \$800,000 if investing in a targeted employment area. Targeted Employment areas are rural area or an area that has experienced high unemployment of at least 150 percent of the national average. INA Sec 203 (b)(5)(B)(ii).
2. Investment must benefit the US economy
3. Create full-time employment for at least 10 U.S. workers. Keep in mind the troubled business exception can eliminate the requirement to create 10 jobs if company qualifies. See definition below.

Troubled Business Exception: If one invests in a troubled business one need not create 10 jobs but must maintain the jobs there at the time, but if that doesn't occur one could lose conditional resident status.

4. Manage day to day operations of the business or directly manage it through establishing business policies for ex. as a corporate officer of the company.

Regional Centers- Pilot Program: 8 CFR 204.6

Qualifications:

1. Investor does not need to create 10 jobs directly, as long as he can demonstrate that the regional center has indirectly created 10 more jobs and improved the regional productivity.
2. Investor must invest \$1,050,000 dollars or \$800,000 in qualifying regional centers new commercial enterprise or a troubled business within the area of the designated regional center.

Private and governmental agencies can be certified as regional centers if they meet certain criteria. The Regional Center must be involved in the promotion of economic growth, improved regional productivity job creation and increased domestic capital investment. 8 CFTR Sec 204.6

Organizer of the Regional Center must submit a proposal to USCIS showing:

1. How the regional center plans to focus on the geographical region and how it will achieve its economic growth within the region.
2. A bona fide business plan with credible estimates and assumptions for market conditions, project costs and timelines.
3. How jobs will be created directly or indirectly through capital investment
4. The amount and source of the capital committed and efforts made to start the project.

Application Process:

Three Steps:

1. Investor must get Form I-526 petition approved;
2. Then File Form I-485 to adjust status in the US or file to get an immigrant visa abroad- if approved two year conditional resident card is given to applicant and if they have a spouse and children under 21, they will get dependent E status; and
3. Then, File Form I-829 to remove the conditional status of the petition within 90 days prior to the two year anniversary of the green card.

Removal of Conditional Status- Critical aspects to develop during the two-year conditional period:

Must show:

1. Commercial enterprise was established;
2. Individual invested or was in the process of investing the required capital;
3. Investment created or will create 10 full time jobs; and
4. Sustained the actions required for removal of conditions during the persons residence in the US, substantially invested the capital investment required and has continually maintained this investment during the conditional period.

EB-5 Issues

1. A single new commercial enterprise may be used for investor by more than one investor if each petitioning investor has invested the required amount and each investment results in the creation of a least 10 full-time positions for qualifying employees. A new commercial enterprise may be used for investor/employment creation classification even though there are several owners of the enterprise including persons not seeking classification. All capital invested is identified and all invested capital has been derived by lawful means.

A new commercial enterprise is defined as:

1. Create an original business, 2. Purchase and restructure an existing business or 3. Expand and change net worth or number of workers in a business so that there is a 40% increase in net worth or the number of employees.
2. Pool arrangements- All investors must identify the source of their funds and that they are derived by lawful means.
3. Investor must be involved in the management of the enterprise not merely passive investor.
4. Capital must be contributed- if capital is given in exchange for a note, bond, convertible debt, obligation or any other debt arrangement then it doesn't constitute contribution for capital. Capital doesn't include loans. Indebtedness secured by assets owned by the entrepreneur may be considered capital, as long as the investor is personally and primarily liable for the debts and the assets of the enterprise upon which the petition is based are not used to secure any of the indebtedness. Promissory notes constitute capital as long as they are secured by the petitioners' personal assets.

Be careful, that although initial application for conditional residence is approved often applicants have trouble removing the conditional status as they don't continue to maintain all the legal requirements for EB-5 purposes