WERKSMANS
ATTORNEYS

TAX

# Imminent Changes to US Immigration Program

1 October 2019 *6 min read*

There has been a lot of recent media attention surrounding the EB-5 Investment Visa Program, and for good reason. South African residents are not able to emigrate for exchange control purposes (sometimes referred to as a financial emigration) unless they have a lawful right of abode in the country to which they intend to emigrate to. The EB-5 Investment Visa Program gives residents such a lawful right. This programme has therefore become very popular with South African families who are considering relocating to the USA or alternatively who want to enable their children to be able to benefit from the wide array of opportunities available to them in the USA.

## What Is the EB-5 Investment Visa?

The EB-5 Investment Visa allows an investor to acquire a Green Card for himself, his spouse, and all unmarried children under the age of 21, by investing $500,000 in a qualified EB-5 project. The EB-5 Investment Visa allows one to live, work, study or open a business anywhere in the USA. Furthermore it is easier (and potentially cheaper) for children to obtain access to the better U.S. universities and colleges if they hold a Green Card.

## Job Creation Requirement

In order to be able to qualify for a Green Card, the investor has to invest in a project that creates at least 10 jobs for U.S. workers. There are 2 ways to invest: A direct approach would entail investing the funds directly into one's own business. The Investor would have to actively manage the business and prove that the business has created at least 10 jobs. However this approach also comes with a large regulatory burden to ensure that the business meets the strict regulatory requirements of the EB-5 program. It also means that the investor will have to spend most of his time in the U.S. to prove that he is actively managing the business. The other approach is an indirect approach. This would entail investing in an 'off-the-shelf' investment project. This means that all of the financing and regulatory requirements are already in place. By investing in such a project, the applicant is able to rely on the indirect job creation method i.e. by taking the total jobs created over the lifecycle of the construction project and dividing it by the amount of EB-5 investors, there will be at least 10 jobs created per investor. In addition, many projects on the market have pre-approval from the USCIS (United States Citizenship and Immigration Services) for having already met the requirements of the EB-5 program, including job creation. If the investor's goal is to obtain a Green Card and not actively manage a business then this approach is cheaper, more convenient, and reduces the risk significantly.

## How Long Does It Take to Get a Green Card?

It takes approximately 18-24 months from when the investment is made to obtain a Conditional Green Card. From the moment that the applicant has obtained a Conditional Green Card, he has all the rights and obligations of being a U.S. permanent resident. This means the immediate ability to live, work, open a business or study in the U.S. The Conditional Green Card is valid for 2 years. Before the end of this two-year period, the applicant will need to apply to have the conditions on his Green Card removed. In order to do so he will have to prove to the USCIS that his investment has created at least 10 U.S. jobs. Once the USCIS is satisfied that the investment has met all the requirements of the EB-5 program, the applicant's Green Card will be converted into an Unconditional Permanent Green Card. It is at this stage that the funds that were invested in the project can be returned to the investor.

## Limited Time Frame

There is a last minute rush to participate in this program from investors from across the world owing to imminent changes. From 21 November 2019, the minimum investment amount is set to increase from $500,000 to $900,000. This means that in order to meet the aforementioned filing deadline all applications need to be submitted by the end of October at the latest in order to qualify for the investment amount of $500,000. Furthermore all applications that are submitted prior to 21 November 2019 will not be affected by additional changes to the regulations that also come into effect on this date. These changes raise the eligibility requirements of the EB-5 program. The net effect of the price hike and other changes to the regulations will have the effect of making it much more difficult to obtain an EB-5 Investment Visa after 21 November 2019.

## Tax Implications

Both the South African and U.S. tax implications should be carefully considered before applying for the EB-5 Investment Visa. The main reason is because obtaining a U.S. Green Card automatically makes the applicant a U.S. tax resident. This could result in a South African CGT Exit Tax liability, which is a CGT liability arising from the deemed sale of the global assets of the applicant. This occurs upon the cessation of South African tax residence status, which happens because the applicant has applied to permanently emigrate from South Africa, and because of the application of the tie-breaker test in the US/SA Double Taxation Treaty. Another reason is because any U.S. pre-immigration tax structuring must be done prior to obtaining the U.S. Green Card.

## With So Many Projects Out There, Which Project Should an Investor Choose?

It is important to evaluate projects very carefully. The investor's ultimate aim at the end of the day is to obtain a Green Card. Therefore one needs to choose a project that limits risk as much as possible. It is very important to choose a project in which the developer and EB-5 partners have a proven track record. It is also very helpful to choose a partner who has a local point of contact to guide the investor along the process. IVY EB-5 is an example of a company that has many years of experience in evaluating suitable projects in the market. Its mission is to connect qualified investors with superior job-creating projects that satisfy all of the requirements of the EB-5 Investment Visa Program. IVY EB-5 works with experienced development partners, using rigorous standards to select projects, and investing in safe and dependable markets. IVY EB-5 has worked with investors from all around the world to help them safely secure permanent residency in the U.S.A through this tried and trusted government program. IVY EB-5 has a permanent local office in Johannesburg.

## Leading EB-5 Firm to Visit South Africa

One of the leading EB-5 firms from the USA, whom IVY EB-5 works closely with, will be in South Africa from 2 – 7 October 2019. This is an incredible opportunity to meet them in person before the investment amount increases.

## Contact Details

To learn more about the EB-5 Investment Visa or to schedule a meeting please contact:

Rael Cynkin
rael@ivyeb5.com
t. +27 11 485 3955
m. +27 83 346 4627

To learn more about the tax implications of obtaining an EB-5 Investment Visa please contact Michael Honiball
mhoniball@werksmans.com

t. +27 11 535 8336

**Michael Honiball**

Director

View Profile