

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

## IMMIGRATION LAW

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### Investments Are Unlocking the Door for Many Immigrants

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*Special to the Legal*

It is no secret that illegal immigration is a problem in the country. However, what is less well known are the increasing roadblocks to legal immigration. It is difficult to remember a time when more paths were blocked, more doors locked.

This article is about how many foreign nationals with limited or no available options under existing immigration law are now using investments to unlock the door to legal permanent residence status. The following are some examples:

- Retirees, who have no family in the U.S. and do not want to work in the U.S., but will be completely self-sufficient;
- Foreign nationals who qualify for U.S. permanent residence through family or employment but who are in a multiple year (sometimes longer than a decade) waiting list;
- Graduating students who obtain a job offer but are shut-out by the H-1B quota;
- Parents who want a child to be able to study in the U.S. and obtain in-state tuition;
- Professional level employees who are reaching the six-year limit for H-1B visa status;
- A CEO or corporate manager who is being hired by a company but not being transferred from an overseas subsidiary;
- Investors who might be eligible for a visa based upon their investment (E-2 Treaty Investor Visa) but for the fact that their country does not have an investment treaty with the United States;
- Managers or executives of an overseas company that will close upon the transfer of

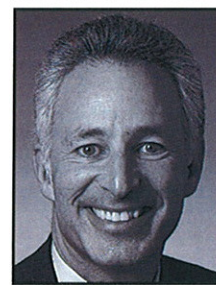
the owner/manager to the U.S., thereby rendering the foreign national ineligible for permanent residence as a multinational manager; and

- A foreign national who wants to invest but does not want to be involved in active management of, or employment in, a business in the U.S.

These (and many more) are examples of foreign nationals for whom options may be limited or non-existent to obtain legal status in the U.S., and especially to remain in the U.S. as much or as little time as the individual prefers.

For these individuals, and many others looking for a path to legal permanent residence status in the U.S., investment is a possible and often the best option. The "EB-5" category for permanent residence status requires an investment of either \$500,000 or \$1 million in a commercial enterprise that will produce 10 full-time jobs for U.S. workers. This has traditionally been a very restrictive category for many foreign nationals, including those listed above, both because most geographical areas (other than high unemployment and highly rural areas) require a \$1 million investment and because the hiring of 10 full-time U.S. workers in a new business is undesirable or unrealistic.

However, those problems are solved by investment in a government-approved "regional center." These regional centers are pre-approved for \$500,000 investments and pre-approved for creating the requisite number of jobs for U.S. workers. That, plus the plummeting value of the dollar, which makes \$500,000 seem like a far lesser amount to many foreign nationals from



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many countries, has made the regional center EB-5 investment a particularly attractive option. In addition, the regional center option is effective because:

- Indirect employment creation is allowable;
- There is presently no quota waiting list;
- The government generally expedites adjudication of the investor petition;
- The foreign national can work anywhere he wants; or not work, as he pleases;
- The foreign national's children may stay in the U.S. and study in the U.S.; and
- The foreign national can travel in and out of the U.S. as frequently as she desires.

A foreign national looking at the investment option should, however, be aware of at least three caveats: USCIS will place a high burden on the foreign national to prove the

lawful source of his investment funds; the foreign national will obtain a green card good for two years. Before the end of the two years, the foreign national must file a "conditional removal" petition in order to obtain a permanent green card; and if using a regional center, the regional center chosen is critical because, in order to remove conditions, the foreign national must prove that the regional center, in fact, created the requisite number of jobs for U.S. workers.

Because of the attractiveness of this program, many regional centers have been springing up across the country and been approved by USCIS. However, one of the oldest, most established and most successful of the regional centers happens to be right here in Philadelphia. The PIDC Philadelphia Regional Center, developed in conjunction with the Philadelphia Industrial Development Corp., has had hundreds of investment petition approvals, as well as 100 percent approvals on condition removal petitions.

The investments are made in limited partnerships, which lend money to development projects around the city of Philadelphia, most notably a number of projects in the Philadelphia Navy Yard. Each of the projects is monitored by PIDC to make certain that more than enough job creation occurs to sat-

isfy the requirements of the law. The investment is placed into escrow until the investor petition is approved, and then must be maintained for at least five years before withdrawal with interest is allowed.

Because of the success of the Philadelphia Regional Center, the Pennsylvania Department of Community and Economic Development has recently created a new Pennsylvania Regional Center in Conjunction with the general partner that administers the Philadelphia Center. The Pennsylvania Center finances construction projects in western Pennsylvania.

Of course, as with any other investment, the financial aspect of the investment should be reviewed closely by a financial professional. Often, it is wise for the investor to review more than one regional center before making an investment decision. If doing so, the investor, or the investor's advisers, should consider the following issues, among others:

- The amount required to be paid by the investor.
- Is payment made into an escrow account? Is the investment amount refunded if the investor petition is not approved?
- How many investor petitions have been filed by investors in the regional center? How many have been approved? How many

have been denied?

- Is the regional center affiliated with any government entity?
  - What use is made of the investor's funds? What are the type or types of projects?
  - When can the investor withdraw the investment?
  - What provisions are made regarding the security of the investment?
  - How many years of experience does the general partner or principal in the investment project have in working with immigrant investor programs?
  - How many years of experience do the principals involved in the regional center have in job creation?
  - Does the regional center have a history of direct job creation, or only indirect job creation?
  - How many conditional removal approvals have the regional center investors received within the past two years?
- While regional center investment certainly is not a solution to the problem of all foreign nationals seeking permanent residence in the U.S., it is becoming an increasingly attractive option to be included in the array of options discussed when counseling foreign nationals on obtaining permanent residence in the U.S. •