

## Questions for Screening Appropriateness of Stand-alone EB-5 Investment

Here are questions that I ask in order to judge EB-5 fit for a new project or business expansion:

### 1. Job creation:

- Will the proposed new business or expansion involve creating 10+ full time jobs/investor *in addition to* preserving *all* existing jobs if any?
- Are the jobs to be created actually new, not existing jobs being moved from one location to another?
- Is the business willing to deal with the paperwork hassle of proving with payroll records and I-9 forms the number of full time employees prior to the investment and throughout the investor's 2-3 year conditional period? Is it equal to the challenge of proving that all of its employees are legal U.S. workers?

### 2. Structure:

- Will the employees receive W-2 from the entity that received EB-5 equity investment? (with stand-alone EB-5, you can't have a loan arrangement, and if the investing entity and job creating entity are separate then one needs to be a wholly-owned subsidiary of the other)
- Will EB-5 investors have a management role? (If the entity is an LP, it's enough for them to be Limited Partners. If another kind of entity, you may have to put them on the Board of Directors or give some kind of token participatory role.)
- Was the business receiving EB-5 investment established after November 29,1990? (If not, it doesn't qualify as "new" and must go through additional and onerous hoops.)

### 3. Timing:

- Is the project/business expansion plan sufficiently mature and with enough committed resources to get off the ground shortly after receiving EB-5 investment?
- Can the business deal with the EB-5 investor processing wait? (EB-5 funds may be available immediately if the investor is willing. However many investors want funds held in escrow until they receive I-526 approval, which can take about nine months allowing for time to prepare the petition and for it to be processed.)
- Will jobs be created within two years?
- Can the business hold off on new hires until after EB-5 investment is received?
- Will investment be distributed within two years?
- Will it be possible to sustain the job creation at least five years (taking into account possible visa processing delays)?

#### 4. Investment

- Will all the EB-5 money be used in a way that clearly links to job creation? (Should be applied to costs somehow related to development. Paying off existing debt or long-term covering of ordinary operating expenses are two problematic uses.)
- Will all the EB-5 money be used in a timely manner? (Should have a plan to spend all of it during the investor's 2-year conditional period. Holding part of the investment in reserve long-term is problematic as USCIS may suspect that the money's just being held to pay back the investor and won't be used for job creation.)
- Does the proposed project/business rely on non-EB-5 capital as well and if so can it demonstrate that the non-EB-5 financing has been or is very likely to be committed?

#### 5. Marketing and Practical Considerations

- Is the project/business located in an area of high unemployment? (Most EB-5 investors prefer the \$500,000 option. If the investment is very solid and will offer return, it may attract a \$1 million investor.)
- Can the business offer an exit strategy about 5 years after investment? (A majority of EB-5 investors are just in it for the green card and are very concerned about exit strategy. A few people out there have an investor as well as an immigrant mindset, and they may consider longer-term opportunities.)
- Is the investment conservative? (Most EB-5 investors are looking for security, not profit.)
- Is the project/business associated with any name brands? (A recognized franchise, a contract with a big name, a sponsor with recognized name will all be useful.)
- Do the backers of the project have any contacts or ideas about how to find an EB-5 investor?
- Are the project backers willing to deal with having an immigrant in a nominal management role, and alive to the challenges of dealing with a high-net-worth individual whose whole family will get deported if the project fails or if the full number of jobs can't be created?

### Useful Links

About the EB-5 program:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=facb83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD>

About EB-5 investor petitions:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=8bf89ea1c35be210VgnVCM100000082ca60aRCRD&vgnnextchannel=8bf89ea1c35be210VgnVCM100000082ca60aRCRD>