



Navigating EB-5 Visa Interviews: Documents To Bring As “Backpocket” Evidence



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After years of waiting for an I-526 immigrant petition for EB-5 investors to be approved, an applicant finally gets the notification from the consulate that the immigrant visa interview is scheduled. What should be done to prepare for that all important interview? Of course, there are the usual documents, such as the medical reports and the police clearance to prepare, as in all other immigrant visa interviews. One would also need to show any previous visa history, such as previous applications for a visitor visa (B1/B2), student or intern/exchange visas (F-1, M-1, J-1) or other work visas (H1B, L-1, O-1), positive or negative.

In addition to the above, there is EB-5 specific information and documentation an applicant should know and prepare. The EB-5 visa category is for a foreign investor to invest in a new, U.S. commercial enterprise to create 10+ permanent, full-time jobs. There have been many derogatory articles describing the EB-5 program as the “golden visa” program and suggesting that the wealthy foreigners are “buying” visas. In order to get the I-526 approved, the applicant had to prove to USCIS that the investment was actually made into that new commercial enterprise and that the funds were sourced legally. Because EB-5 is an investment immigration program, applicants should know and understand something about the business in which they invested. It could be unwise to show the consular officer that they invested in EB-5 project/business just to get the immigrant visa, i.e., “buying a visa.”

The main purpose of the EB-5 interview is to verify supporting documentation in the underlying petition and to make sure that the investor is not subject to any grounds of inadmissibility. While USCIS has already adjudicated the petition, the interviewer has the authority to ask anything about the petition that he/she wishes. Some consular posts have even tried to adjudicate the entire I-526 petition de novo. That being said, most officers will usually focus on the applicant’s general familiarity with the project and the terms of their investment, inadmissibility grounds, and their civil documents.

Applicants should know and should be able to explain – at least summarily – about the project or business in which they have invested. They also should be able to explain how they have gathered the funds and path-of-funds movements. In other words, they should know what was in their I-526 filings to be consistent at the interview. While Consular officers try to complete the interview in a timely manner, discrepancies between records and an interviewee’s answers could cause a delay, or even denial, in issuing a visa.

However, each EB-5 petition (I-526) filed consists of thousands of pages of documents – I feel so bad for all the trees we kill in order to submit each EB-5 petition – and it will be hard for applicants to explain the contents of these thousands of pages to the consular officer. Therefore, it is prudent for applicants to obtain from their immigration attorney, or in some cases a migration agent with whom they worked, to provide you with a

chart of the money flow or summary of the source and path of funds that could be easily reviewed by the consular officer. Further, if the investment was made through a limited partnership or similar entity associated with a Regional Center, it would be helpful for the Regional Center or the investment enterprise to provide applicants with an Executive Summary of the project that is no longer than a page so that they could readily understand and inform the consular officer – bullet points of the project summary would be even better. Salient features of the project in that summary should include how the jobs will be created and the expected number of jobs to be created, total capital to be raised, EB-5 portion of the entire capital stack, how many investors, EB-5 investors’ role in the business (i.e. management and/or policymaking functions) and what type of business it is, the nature of the project, and occasionally officers will ask if applicants know what their funds were used for. Thus, a review of the business plan is essential, and the applicant should also obtain from the regional center (or NCE) a comprehensive update of the current status of the project before the interview, as updates are likely required since the I-526 was submitted several years earlier.

Also, as is the case in all immigrant visa interviews, the consular officer will also ask questions about the applicant’s background, verify and update all information provided in the application process, and review any health-related issues that may have implications for inadmissibility. There are a number of reasons applicants can be found inadmissible, including criminal violations, past unauthorized entry to the U.S., fraud, misrepresentation of immigration facts, health reasons and other reasons. Even relatively minor crimes (e.g., shoplifting) can make someone inadmissible as they are considered crimes of moral turpitude.

Long story short, the purpose of the U.S. Consulate interview (immigrant visa interview) is to decide if the applicant and any dependent family members are eligible for immigrant visa issuance. The interview will consist of file assessment and questions to determine admissibility to the U.S. While the purpose of the interview is not to “re-adjudicate” the approved I-526 petition, the Consular officer may ask general questions to confirm eligibility for the EB-5 classification, which is likely to include questions about the EB-5 investment, e.g., how much did the applicant invest, what is the name of the project and where is it located, and how the petitioner obtained the funds to invest in the EB-5 project, and whether the investment includes a guaranteed return.

As long as the applicant answers are truthful and consistent with what is already in the I-526 petition file and he or she is otherwise admissible to the U.S., the immigrant visa should be “granted”, and the EB-5 investor and their family could start on their journey in the U.S. as a permanent resident.

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It is prudent for applicants to be prepared for the discussion of such general topics by reviewing and having available at the interview, for example:

- The cover letter filed with USCIS for the I-526 petition;
- The business plan for the project – it would be helpful to obtain a one-page summary of the business plan;
- A copy of the I-526 petition that was filed;
- Bank statements to show that funds were transferred out of escrow to EB-5 project or other proof and summary of source and path of funds prepared by your attorney or the migration agent;
- Information provided by the regional center project (certificate, K-1s, project updates);
- All original documents submitted to NVC, including original birth certificates, marriage certificates, etc.; and
- Personal information including details of your employment history, police records, dependents, family connections etc.

The applicant also should be prepared to discuss the following about themselves and the EB-5 investment project/business:

- The name and description of the new commercial enterprise that they invested in
- Relevant dates related to the filing and approval of the petition
- The current status of the project
- The source and path of funds for the investment (where did the money come from and how was it transferred to the United States from abroad)
- Documentation showing that funds were released from escrow
- Any responses to any of the security questions in the DS-260 visa application
- Any factor that may make the applicant inadmissible ■

