



Understanding the Immigration Process

Immigrant investors participating in the EB-5 program follow a two-step process established by the federal government that determines their eligibility for the program as well as their admissibility to the United States. These procedures are common to applicants under any visa category and include numerous background checks and national security screenings.

Step One: Filing of Eligibility Petition

- Individuals first file a petition with USCIS to determine their eligibility to participate in a visa category. For EB-5 this is the I-526 or I-526E petition.
- The I-526/E petition must include information on the lawful source and path of funds to be invested through the program¹ along with other information documenting how the funds will be invested to create jobs required as required by the program. This is more detailed information than is required for petitioners under other visa categories.
- For EB-5, as for any visa category, approval of an eligibility petition does not constitute approval of a visa on the petitioner.
- USCIS also has well-established procedures and criteria to request expedited review of eligibility petitions². Expedited review does not mean expedited approval – just expedited consideration of the petitions for this first step of the two-step process.

In May 2013, USCIS stood up a new EB-5 program office staffed by economists, business experts and fraud and national security specialists from the Department of Homeland Security's Fraud Detection and National Security Directorate³, which coordinates with other law enforcement and intelligence agencies in the adjudication of EB-5 petitions.

¹ <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process>

² <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-inquiries>

<http://www.uscis.gov/forms/expedite-criteria>

³ <http://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/fraud-detection-and-national-security-directorate>

As part of the eligibility review, USCIS can issue a request for evidence (RFE) if more information is needed to determine an individual's eligibility for the program.

Step Two: Determining Admissibility and Granting of Visas

Once an eligibility petition is approved, the next step in the process is the same for EB-5 applicants as for applicants under any other visa category.

- Immigrants file either a visa application with the Department of State, if they reside outside the U.S., or an adjustment of status application with USCIS, if they already side in the U.S. on another visa.
- Approved petitions for immigrants residing outside the United States are sent by USCIS to the National Visa Center, the State Department's clearinghouse for applications in all visa categories.
- The NVC then requests supporting documentation from the visa applicants before sending the completed file to the appropriate U.S. Embassy or Consulate.
- Consular affairs officers at the appropriate Embassy or Consulate then determine if the individual is admissible to the United States and whether or not a visa will be granted based on in person interviews, a review of the entire application and petition file, and additional background checks and national security screenings that may include independent and/or in-country investigations conducted in coordination with other federal intelligence and national security agencies before or after the interview.⁴
- Applications for adjustment of status are sent to USCIS for review which includes background checks and may also include an interview.⁵ USCIS can conduct its own independent investigation through online and other systems and can obtain assistance from the State Department for in-country investigations.
- Visa processing can take months or years while these investigations are conducted.

If the EB-5 applicant is found to be admissible to the United States, a conditional visa is granted allowing the applicant to reside in the United States for two years.

Before the end of that two-year period, the immigrant must file an I-829 petition documenting that their investment through the EB-5 program has created a minimum of 10 U.S. jobs. If USCIS confirms that job creation, the I-829 petition may be approved, lifting conditions on the visa. However, if even at this stage, if USCIS finds that the applicant should have been have inadmissible originally – or was not determined to be

⁴ <http://fas.org/sqp/crs/homesecc/R43589.pdf>

⁵ <https://egov.uscis.gov/cris/Dashboard/CaseStatus/BucketDescriptions.do>

deportable – removal proceedings can be initiated against the investor or family member.

National Security Screening for Visa Applicants

A [Congressional Research Service](#)⁶ report on visa security published in June 2014 details the screenings that are conducted by the U.S. Department of State's Bureau of Consular Affairs for applicants in any visa category:

Consular officers use the Consular Consolidated Database (CCD), a biometric and biographic database, to screen all visa applicants. Over 143 million records of visa applications are now automated in the CCD, with some records dating back to the mid-1990s. Since February 2001, the CCD has stored photographs of all visa applicants in electronic form; since 2007, the CCD has begun storing 10-finger scans. The number of visa cases in the CCD surpassed 100 million in 2009, including 75 million photographs.

In addition to indicating the outcome of any prior visa application of the alien in the CCD and comments by consular officers, the system links with other databases to flag problems that may have an impact on the issuance of the visa. These databases linked with the CCD include DHS's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation (FBI) Integrated Automated Fingerprint Identification System (IAFIS) results, and supporting documents. In addition to performing biometric checks of the fingerprints for all visa applicants, DOS uses facial recognition technology to screen visa applicants against a watchlist of photos of known and suspected terrorists obtained from the Terrorist Screening Center (TSC), as well as the entire gallery of visa applicant photos contained in the CCD.

The CCD also links to the DHS's Traveler Enforcement Compliance System (TECS), a substantial database of law enforcement and border inspection information that enables CBP officers at ports of entry to have access to CCD. A limited number of consular officers have been granted access to DHS' Arrival Departure Information System (ADIS). ADIS tracks foreign nationals' entries into and most exits out of the United States. DOS credits access to ADIS with its ability to identify previously undetected cases of illegal overstays in the United States.

⁶ <http://fas.org/sqp/crs/homesec/R43589.pdf>