



**The Law Offices of Adam Edward Rothwell, Esq.**

## **Six Parts of Legal Immigration that should be Reexamined by Adam Edward Rothwell**

### **1) Dollar Amount of the EB-5 Investment Based Green Card Program**

There are so many real issues related to the current EB-5 investment green card program that it is not worth even mentioning them all here. Of all these concerns, one issue that makes absolutely no sense is the amount of investment required to apply for an investment based green card has remained constant for years. The minimum investment amounts are either \$1 million or \$500,000 in a targeted enterprise zone. There are not even annual increases for inflation.

These two minimum investment levels are relatively low for many wealthy foreigners. Also foreign citizen investors using the EB-5 Program often invest very close to the absolute minimum requirement.

Regardless of their net worth a high percentage of foreign investors in targeted enterprise zones understandably invest the \$500,000 exact minimum. There is no reason under the EB-5 Program to invest more. Yet, if the EB-5 Visa program is worth continuing, the theoretical goal should be to get the highest amount of US investment dollars with the least amount of green cards issued to qualified applicants and their families.

### **2) The US Department of Labor needs to start charging filing fees for work related to work visas.**

It is a little vexing that the US Dept. of Labor does not charge anything for work on applications related to immigration. The US Dept. of Labor has to build and manage secure online databases, perform research, store files, retain thousands of workers and incur substantial other annual expenses for immigration-related applications. And all applications with the US Dept. of Labor are affirmative, meaning businesses choose to file these applications. US based employers wanting to sponsor foreign workers should logically be responsible for incurring at least a portion of these costs.

Immigration lawyers and private advertisers charge in total thousands of dollars related to preparing certain individual applications for filing with the US Dept. of Labor.

Businesses choose to incur these fees to support their applications but then do not pay any filing fees for the actual applications to the US Dept. of Labor. If anything, the US Dept. of Labor should charge fees that go towards a fund to educate/train US workers.

The fact that the US Dept. of Labor currently requires no filing fees is also risky from a security standpoint. Requiring no filing fees opens up the US Dept. of Labor foreign labor system to the possibility of a mass filing of fake simply to flood the system, thereby quickly sabotaging the current US immigration system. Please note I have previously mentioned this point to multiple US Dept. of Labor employees who have always stopped, thought about it and agreed. But no one does anything about it other than to respond to me something along the lines of, "You're right- I never thought about that."

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### **3) Filing fees with the US Department of State should be raised, if only to speed up processing and improve security background checks by hiring more workers at the National Visa Center, US Consulates and other offices.**

It currently costs roughly \$600 more in total government filing fees for a green card to be issued through processing only with USCIS than through green card processing involving the agencies of both USCIS and the US Dept. of State. This is because the US Dept. of State requires considerably less filing fees than the USCIS for applications.

It is rather confusing why it costs a foreign citizen less to apply for a green card through using both USCIS and the US Dept. of State instead of just the one agency of USCIS. If anything, as more federal workers and agencies are involved when the process involves both the US Dept. of State and USCIS, it probably should involve more filing fees to apply with the two agencies. The filing fees should be raised with the US Department of State, if only to hire more workers (to both speed up processing and improve security).

If more US Dept. of State workers were hired, more US Dept. of State workers could then be dedicated to checking social media and background checks. It is confusing why the US Dept. of State charges considerably less fees to process documents when there is also a concern over whether enough time is being spent by the US Dept. of State on security checks of Applicants. Charge more fees and then hire more workers.

### **4) The US Naturalization process needs to be reexamined to ensure foreign citizens naturalize for love of the US rather than mostly personal gain.**

Initially the US Naturalization test is easy. The questions might not be easy on their face, but there are only 100 possible questions with specific answers, and the questions as well as answers are all readily available online (even on the USCIS website).

That being said, when most natural-born Americans (more or less American veterans) are asked, "What does being an American mean to you," the answer is usually theoretical. Love of and value for freedom, appreciation of differences, theoretically being able to succeed from almost any initial situation and wanting to better the world are all values that help define being an American. However, while individuals do naturalize based on these same values, a substantial portion of foreign citizens naturalize to US Citizenship for primarily unrelated personal gain. These personal benefits include:

- 1) Wanting to sponsor or speed up sponsorship of family members
- 2) Wanting to apply for US Government jobs that require US Citizenship
- 3) Wanting to travel internationally on a US Passport
- 4) Wanting to actually leave the US (The idea that someone would become a

US Citizen to leave the US may seem quizzical, but this is fairly common way to game the system. A green card holder risks abandoning his/her green card by staying more than 6 months in a row overseas, but US Citizenship is never lost by spending extensive time outside the US. So foreign citizens with green cards who really want to live in their home country for example realize that if they first Naturalize to US Citizenship, they may then leave the US indefinitely).



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The US Naturalization process needs to be more detailed to ensure foreign citizens naturalize based on love for the US instead of primarily unrelated personal gain.

### **5) H-1B Visa Fees should be reexamined.**

The H-1B Application process has been greatly over-subscribed for years. If the cap numbers are not raised, the high number of annual applications shows the process is not anywhere near efficient. This means in my opinion either the annual cap numbers should be modified or the amount of money charged for H-1B applications is too low. If there are greater than 50,000 more H-1B Visa applications in the first five days applications are accepted than all the total H-1B Visas available for the entire fiscal year, there are at least major inefficiencies in the system. Similarly the amount of filing fees required by H-1B sponsoring employers placed in funds to educate US workers and combat fraud have never been raised. These amounts should also be reexamined.

Any efficient market-based system would never work this way. If there astronomically more demand than supply, either supply is raised or prices/fees are increased.

### **6) The E-3 Visa Program**

The E-3 Visa Program mostly flies under the radar and allows for the issuance each fiscal year of up to 10,000 new professional work visas. However, the E-3 Visa program is limited to Australian citizens, so the 10,000 annual visa cap number has never been met. It may be worth considering if it makes sense (regardless of the initial policy rationale) to have an entire US work professional visa category limited only to Australian citizens.

There is no application required for an E-3 with the USCIS. There is just an application with the US Dept. of Labor (which per point #2 above requires no filing fee) and then what is usually a straightforward application at a US Consulate for the E-3 Visa stamp. Additionally, spouses of E-3 Visa holders are allowed to receive work authorization, which once received allows them to work anywhere at virtually any job in the US.

The annual cap number for E-3 professional visas just for Australians is almost 15% the entire H-1B annual cap number. Moreover, if the E-3 cap number has never been met, the 10,000 annual cap number appears to authorize more new annual E-3 Visas than are needed. In essence the H-1B professional visa cap number is greatly over-subscribed each year, while the E-3 professional visa cap number is always under-subscribed each year. These things seem to logically conflict.

*Adam Edward Rothwell is an attorney based in Baltimore, MD. He has been licensed for 17 years and is actively licensed in Maryland and Washington, DC. US Immigration is a portion of his practice, which also focuses on mediation, arbitration, corporate and strategy. He is available in the US and internationally for potential comment, consultation, speaking engagements, representation and board membership.*

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