



## GLOBAL CONNECTION

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### U.S. Immigration Investment Opportunities for Foreign Nationals

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There are several investment opportunities in the U.S. for foreign nationals who are interested in living in the U.S. either temporarily or permanently. Immediately below is a brief outline of some of those investment opportunities along with their basic qualification requirements. Those visas that are labeled “non-immigrant” allow the foreign national to live in the U.S. for a given period of time but do not grant permanent residence status to the foreign national. “Immigrant” visas refer to visas that grant permanent residence status to the foreign national. Obtaining permanent residence (“green card” status) means that the foreign national can remain in the U.S. indefinitely and can work for any company. Most immigrant and non-immigrant visas allow spouses and minor children to accompany the principal applicant.

#### Non-Immigrant Investment-Related Visa Options

##### 1. E-1 (Treaty Trader) and E-2 (Treaty Investor)

**A. Coverage:** Business owners, managers and employees who need to remain in the U.S. to oversee or work in an enterprise engaged in trade between the U.S. and the foreign national’s home country.

**B. Duration of Stay:** Initially given two (2) years. However, this period can be

extended almost indefinitely as long as the qualifications are met.

### **C. Qualifications:**

**1. Treaty with the U.S.:** Currently the U.S. does not have a qualifying treaty or equivalent arrangement providing for trade and investment with China. However, investors from Taiwan do qualify for the E-1 and E-2 non-immigrant visas.

2. Majority ownership or control of the investing or trading company must be held by nationals of the same foreign country that has the treaty with the U.S.

3. Each person seeking the E visa must hold the same citizenship.

4. For Treaty Traders (E-1), the trading company must be engaged in substantial trade, primarily between the U.S. and the treaty country and the employee or principal must act as either a manager/executive or have an essential skill set needed by the company.

5. For Treaty Investors (E-2), the investor must make a substantial, irrevocable investment of funds into the company. That investment should create jobs for U.S. workers and the person seeking the visa must fill a key role within the company, either as a manager/executive or as a highly specialized employee necessary for the investment development.

**D. Family Issues:** Spouses and minor children of E-1 or E-2 visas may accompany the principal visa holder. Spouses of E-1 and E-2 visa holders can apply for work authorization once they are in the U.S. Such work authorization usually takes about 90 days to obtain and allows the spouse to work in the U.S. for generally any employer.

## **2. L (Intra-Company Transferee)**

**A. Coverage:** Managers, executives and persons with specialized knowledge.

**B. Duration of Stay:** Managers and executives can stay for up to seven (7) years, although the initial period of stay granted is usually limited to three (3) years. Persons with specialized knowledge can remain for up to five (5) years, although their initial authorized period of stay is generally limited to three (3) years. For new start-up companies in the U.S., the initial period of authorized stay is one year, with the ability to request subsequent extensions up to the maximum allowed number of years.

### **C. Qualifications:**

1. The foreign national must have been employed for one of the preceding three years (before coming to the U.S.) in a managerial or executive capacity or in a position

requiring specialized knowledge.

2. The foreign national must be coming to the U.S. to fill a managerial or executive position or a position requiring specialized knowledge.

3. The foreign company for which the foreign national has worked for at least a year must be related in a specific manner to the U.S. company. The company abroad must be the same employer or a subsidiary or affiliate of the U.S. company or hold another qualifying related relationship.

4. Both the foreign company and its related U.S. company must continue to do business during the entire period of the transfer.

**D. Spousal Work Authorization:** Spouses and minor children of L-1 or L-2 visas may accompany the principal visa holder. Spouses of L-1 and L-2 visa holders can apply for work authorization once they are in the U.S. Such work authorization usually takes about 90 days to obtain and allows the spouse to work in the U.S. for generally any employer.

## **Immigrant Investment-Related Visa Options**

### **1. Employment Based, First Preference (EB-1)**

**A. Coverage:** Managers, executives and persons with specialized knowledge (same as the L-1 non-immigrant category described above).

**B. Duration of Stay:** Once this preference petition is approved and a visa is available, the foreign national can file for permanent residency for himself and his immediate family including minor children. Upon obtaining permanent residency, the foreign national and his family can remain in the U.S. indefinitely.

#### **C. Qualifications:**

1. The foreign national must have been employed for one of the preceding three years (before coming to the U.S.) in a managerial or executive capacity.

2. The foreign national must be coming to the U.S. to fill a managerial or executive position.

3. The foreign company for which the foreign national has worked for at least a year must be related in a specific manner to the U.S. company. The company abroad must be the same employer or a subsidiary or affiliate of the U.S. company or hold another qualifying related relationship.

4. Both the foreign company and its related U.S. company must continue to do business during the entire period of the transfer.

5. If the foreign national works for a start-up company in the U.S., he must wait until the company has been operational for one full year before filing for the EB-1.

Many foreign investors who own foreign companies, start up U.S. affiliated companies as subsidiaries and then transfer themselves as an executive or manager to run the U.S. operation. After a year, the foreign national then makes the transition from being a non-immigrant (L visa) to filing the first preference petition indicating he wants to become an immigrant.

**D. Family Issues:** If the first preference petition is approved, the foreign national and his family (minor children) who are already in the U.S. can file for permanent residence (getting their "green cards") immediately. This process is called "adjusting your status." There is no waiting time for visas to become current. Visas are current for the first preference category.

**E. Citizenship:** Once the foreign national obtains permanent residence status, he must wait for five years before applying for U.S. citizenship. There is no requirement that the foreign national apply for citizenship.

## **2. Employment Based, Fifth Preference (EB-5)**

### **Individual investors**

**A. Coverage:** This preference category includes individuals who are interested in investing in the U.S. and taking an active role in the management of the U.S. company.

**B. Duration of Stay:** Once this preference petition is approved and a visa is available, the foreign national can file for permanent residency for himself and his immediate family including minor children. If approved, the alien and his family will receive "conditional" permanent residency for a two (2) year period. Toward the end of the two-year conditional permanent residency, if all conditions are met for the visa, the foreign national and his family will receive regular permanent residence status. Upon obtaining permanent residency, the foreign national and his family can remain in the U.S. indefinitely.

### **C. Qualifications:**

1. Investor must normally invest or be in the process of investing \$1 million in a new U.S. business and create jobs for 10 U.S. workers.

2. The required investment may be reduced to \$500,000 if the investment occurs in a high unemployment area, referred to as a TEA (targeted employment area). The list of qualifying targeted areas is available from relevant state authorities.

3. The investor may also invest in a “troubled business” rather than a new business. In that case, the investor must still meet the required dollar investment, but rather than create 10 new jobs, the investor must show that the number of existing employees is or will be maintained at the pre-investment level.

4. The investment must take the form of a contribution of capital that has been placed at risk for the purpose of generating a return on that capital.

5. The capital invested must have been obtained through lawful means.

6. The investor must be engaged in the management of the enterprise through day-to-day managerial control or through policy formation.

### **Regional Centers**

To increase participation in the immigrant investor category, Congress created an immigrant investor pilot program. To participate in the pilot program, foreign investors must invest in an approved regional center established for the promotion of economic growth. A regional center means any economic unit, public or private, which is involved in the promotion of economic growth, including increased export sales, improved regional productivity, job creation and increased domestic capital investment. The number of approved regional centers has increased dramatically in the last several years. Foreign investors can create their own regional centers or invest in already established and approved regional centers.

It is important to obtain sound legal advice before either attempting to create a regional center or investing in a regional center. The creation of a regional center necessarily involves the assistance of a cross-disciplinary team including individuals well versed in the following areas: corporate structures, securities, taxation, economics and immigration. Before investing in an existing regional center, the investor should also seek sound legal advice to understand the risks associated with investing and the likelihood of eventually achieving the foreign national’s long-term immigration goals.

**A. Coverage:** This preference category includes individuals who are interested in investing in the U.S. through an established regional center that has identified specific projects and uses funds pooled from various investors to fund those projects.

**B. Duration of Stay:** Once this preference petition is approved and a visa is available, the foreign national can file for permanent residency for himself and his immediate

family including minor children. If approved, the alien and his family will receive “conditional” permanent residency for a two (2) year period. Toward the end of the two-year conditional permanent residency, if all conditions are met for the visa, the foreign national and his family will receive regular permanent residence status. Upon obtaining permanent residency, the foreign national and his family can remain in the U.S. indefinitely.

**C. Qualifications:**

1. The investor must still meet the minimum investment requirements: \$1 million for most investment sites and \$500,000 for investments in targeted employment areas.
2. The investment enterprise must be engaging in approved regional center activities in the qualifying geographic region.
3. The creation of jobs requirement is somewhat relaxed in that foreign investors in a regional center can credit jobs created indirectly through contract or subcontracts with commercial enterprises. However, each investor must still be able to demonstrate the direct or indirect creation of at least 10 jobs.
4. All other requirements mentioned above for individual investors under the EB-5 category remain the same.

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