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EB-5 REGIONAL CENTERS

Congress created the fifth employment-based preference (EB-5) immigrant visa category in 1990 for qualified foreigners seeking to invest in a U.S. business that will benefit the U.S. economy and create or save at least 10 full-time jobs for U.S. workers. It is Section 203(b)(5) of the Immigration and Nationality Act. The basic amount required to invest is \$1 million, although that amount is reduced to \$500,000 if the investment is made in a rural or high unemployment area (i.e. "Targeted Employment Area (TEA)"). Of the 10,000 EB-5 green cards available each year, 3,000 are reserved for foreign nationals who invest through a Regional Center. It is estimated that approximately 90% of EB-5 visas are based on Regional Center investments.

To encourage foreign investment in the U.S. economy through the EB-5 category, Congress created an EB-5 Regional Center Pilot Program ("the Program") in 1992. By so doing, Congress permitted the U.S. federal immigration agency (then "Immigration and Naturalization Service (INS)" which became "U.S. Citizenship and Immigration Services (USCIS)" in 2003) to designate qualified applicants as "Regional Centers," eligible to accept EB-5 capital for economic development in the United States. A Regional Center is a private enterprise/corporation or a regional governmental agency with a targeted investment program within a defined geographic region. The Regional Center Investment Program allocates 3,000 green cards each year for people who invest in designated Regional Centers. The 3,000 is not a limit, just the amount reserved specifically for Regional Center based investments. The Program has been renewed several times, and is currently due to sunset on September 30, 2016.

The EB-5 Regional Center Program does not require that the foreign investor's enterprise itself directly employ 10 U.S. workers. Instead, it is enough if 10 or more jobs will be created directly or indirectly as a result of the investment. The Regional Center Investment Program aids foreign investors by directing and professionally managing their investment in the designated business and geographic focus of their Regional Center.

A Regional Center obtains its designation by submitting a detailed application to USCIS. The application must state: (1) the kinds of businesses that will receive capital from investors; (2) the jobs that will be created directly or indirectly as a result of the investment of capital; and (3) the other positive economic impacts that will result from the investment of capital. The investment offering itself is subject to U.S. securities laws, enforced by state securities regulators and the U.S. Securities & Exchange Commission. Once USCIS has approved a Regional Center application, an investor seeking an EB-5 green card through the Program must make the qualifying investment (i.e., \$1 million or \$500,000) within an approved Regional Center. However, the requirement of creating at least 10 new jobs is met by a showing that as a result of the new enterprise, such jobs will be created directly or indirectly. Before an investor can

participate in a Regional Center's EB-5 investment program, each investor must independently petition USCIS for an EB-5 visa. USCIS solely determines whether the investor qualifies for the EB-5 visa. USCIS' diligence includes a full background check, including detailed review of the sources of the investor's funds (to confirm its lawful origin), family history, and other representations of the head of household and his immediate family member under the age of 21.

As with the regular EB-5 program, qualified investors investing through a Regional Center first receive a conditional green card valid for two years. At the end of that time the investor files another application with USCIS showing that their money was "at risk" during the two-year period and that the jobs have been created in order to remove the conditions. Once those applications have been approved, the investor and his immediate family become permanent green card holders and can later apply to become U.S. citizens. While there is no guaranty regarding return on investment, it is common for regional centers to aim to return at least the principal investment of \$500,000 to the investor once the conditions of the green card are removed. For EB-5 investors, the whole EB-5 process up to removal of conditions can take approximately 5 years.