

FOREIGN FRANCHISEES GAIN NEW BUSINESS AND

US CITIZENSHIP THROUGH INVESTMENT

Foreign franchisees stand to gain more than just profits when they invest in US franchises. A program called EB-5, overseen by the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (the USCIS), grants visas to foreign investors. The program is also noteworthy for franchisors as it may enable them to expand their brand to rural areas where investment would otherwise be impracticable.

In a stagnant economy, the program could provide critical jobs to American workers – one of the requirements of the EB-5 program is that the foreign investor create 10 jobs for qualified U.S. workers in two years.

EB-5 stands for Employment-Based Immigration: Fifth Preference. The program grants visas to investors willing to start businesses or invest in the United States. These workers are given fifth preference – behind, for example, certain religious workers, physicians, outstanding professors and researchers, among others. The program was initiated over two decades ago, but has undergone a bit of a resurgence in recent years as the USCIS has attempted to promote startup enterprises and spur job creation. According to the USCIS, the number of applications for permanent residency through the program rose from approximately 1200 in 2008, to over 6,300 in 2013.

In order to qualify, applicants must meet certain criteria. Generally, an applicant must invest \$1 million in a new U.S. commercial enterprise that creates 10 full-time jobs for qualified U.S. workers. The investment capital can include cash, equipment, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the entrepreneur is personally and primarily liable. The investment capital cannot be borrowed. The investment threshold is lowered to \$500,000 if the applicant invests in a business located in a high unemployment area (defined as locations with unemployment of at least 150 percent of the national average) or rural area (defined as any area outside of the boundary of any city or town with a population of 20,000 or more). Franchisors may be able to use this process to recruit foreign investors to bring their brands to rural regions.

To apply, applicants must file a Form I-526, Petition by Alien Entrepreneur. The I-526 requires that the applicant, among other things, invest in a new for-profit enterprise; be directly involved in the management of the business; and invest a certain amount of money. In addition, the applicant must, within two years, ensure that the business

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generates at least 10 full-time positions for qualified American employees – family members of the applicant do not count toward this requirement, nor do undocumented workers.

Applicants must also submit a comprehensive business plan which outlines the nature of the enterprise and the foreseeability of the required job creation, among other things. Jobs indirectly created from the investment, including construction lasting over two years, management and operation of the business are considered in the application process in certain circumstances, as is the potential for increasing visitor spending in the region of investment. Applicants who expect their investment to have such a ‘ripple effect’ to promote increased spending in their region – for example, those who invest in the development of a hotel or resort, may submit evidence proving that the business will cause increased visitor spending, which will reasonably generate an increase in employment. This evidence may be considered in conjunction with the rest of the application. Upon the approval of the EB-5 applicant’s application, the investor and his or her derivative family members, are granted conditional permanent residence for a two year period.

Through the rise of EB-5 applications, franchisors are increasingly turning to immigrant investors to grow their brands. However, both franchisors and potential foreign investors should take care to fully investigate the process and requirements and consult with knowledgeable professionals including immigration and franchise attorneys.

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