

migrant investor, to understand the different aspects of your decision to immigrate to the United States through investment. With this in mind, and knowing that you frequently are exposed to numerous immigration attorneys to choose from, I am providing you a non-exclusive list of other necessary licensed legal and investment professionals to choose from to work for you, as follows:

(1) Investment Analysts, Brokers,  
and Advisors:

1- Smart Business Brokerage, Mohammed Shaikh, MBA (Acctg), CPA, CFE, Licensed Real Estate Broker (FL & CA), 2323 Caravelle Circle, Kissimmee, FL 34746. (Tel) 1-407-535-0616.<sup>1</sup>

(2) Corporate, Securities and Tax  
Attorneys:

1- The Chugh Firm, c/o Navneep Chugh, Business Attorneys and Certified Public Accountants (CPAs), 15925 Carmenita Road, Cerritos, CA, 90703; (Tel) 562 229 1220

2- Skadden Arps, offices located internationally, Los Angeles Office: 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071 (Tel) 213.687.5000; Brian McCarthy, Partner Corporate, Securities and Merger and Acquisition Transactions; (Tel): 1.213.687.5070

3- Greenberg Traurig, S.C., Paseo de la Reforma No. 265 PH1, Colonia Cuauhtémoc, México, D.F. C.P. 06500, (Tel) 52 55 5029 0000

### WHAT ARE YOUR YOUR QUESTIONS?

Call JEGGLAW LTD @ (702) 898-9540 for an appointment with Jon Eric Garde, Esq. concerning your immigration into the United States through an EB5 qualifying investment.

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<sup>1</sup> Mr. Sheik has personally impressed me with the manner in which he is able to simplify the complexities of investment and clarify the requisite professional ethics of business brokerage and advising.

# JEGGLAW, LTD

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## FREQUENTLY ASKED QUESTIONS

### A COMPREHENSIVE APPROACH TO IMMIGRATING TO THE UNITED STATES THROUGH THE EB-5 IMMIGRANT INVESTOR PROGRAM

### LAW OFFICE OF JON ERIC GARDE ESQ

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# FREQUENTLY ASKED QUESTIONS

## A. What statutes and agencies are involved in the governance of immigration law, including EB5 applications?

1. *The Immigration and Nationality Act, (INA), is the federal statute that governs the grant of all forms of temporary, lawful permanent resident and citizenship status, the admission of such persons with this status, as well provisions for the removal of violators of immigration law and criminal law carrying immigration consequences.*

2. *The Homeland Security Act is a very broad statute that governs, among other issues, the three agencies charged with administering the INA within the U.S., under the direction of the Department of Homeland Security, (DHS).*

3. *These three agencies are as follows:*

*(1) Citizenship & Immigration Services, (CIS), which administers the grant and denial of all forms of legal status, except concerning birth within the United States,*

*(2) Immigration & Customs Enforcement, (ICE), which enforces the departure provisions in the INA against persons who are in violation of the INA, and*

*(3) Customs & Border Protection, (CBP), which oversees the grant and denial of admission of all non U.S. citizens at ports of entry located at U.S. airports and seaports, and at the U.S. border with Mexico and Canada.*

## B. What are the benefits and restrictions that come with becoming a permanent resident in the United States?

1. *Benefits*

*(1) Lawful permanent residents have the minimally restricted right to reside in the United State indefinitely as legal immigrants unless they abandon their status through prolonged indefinite departure from the U.S. or violate U.S. im-*

*as well. This latter form of conflict is most frequently encountered in investment decisions.*

2. *On one hand, the need to comply with federal regulations protects investors against unscrupulous salesperson or protects the public against money laundering and trafficking by criminal organizations. On the other hand, businesses want the smoothest and least resistant means of investing in the most profitable manner. These conflicting interests, while laden inherently with tension, are not irreconcilable, and must be harmonized to effect a successful EB5 application.*

3. *Competing interests need to be effectively reconciled by professionals acting with complete integrity, responsibility and with a spirit of cooperation in service to the immigrant investor, whose success depends upon the success of each licensed professional working, both, independently in his or her discipline and as a team, in order to cover all concerns of critical importance to CIS adjudicators.*

4. *The very nature of the above referenced federal statutes provide reason for ongoing investigation and analysis by U.S. federal agents. This effort is a key factor in protecting the standard of living that has been popularly called "the American Dream." Government agents take the requirements of these statues very seriously, and so too should your team of EB5 professionals!*

## R. Why should an investor prefer to create and work with a team of independent professionals to help select an investment through which to immigrate rather than working with a readily assembled one-stop shop?

1. *It is crucially important that your team of professionals work for you, the investor, first and foremost, as a necessary condition to working with each other.*

2. *The preceding presentation in question and answer format is provided to guide you, the im-*

*this information is needed to prevent a crime or protect national security.*

4. *The Bank Secrecy Act, (BSA), also known as the Currency and Foreign Transactions Reporting Act, requires financial institutions in the United States to assist U.S. government agencies to detect and prevent money laundering. This is a crucial aspect of the EB5 program, which is designed to protect against the use of investment as a means to facilitate the spread of transnational criminal organizations.*

5. *The Racketeer Influenced and Corrupt Organizations provisions, (RICO), of the US Criminal Code provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization.*

**P. Can multiple investors immigrate through an investment without forming a regional center?**

1. *Yes, each of many investors within a group can immigrate through a single investment enterprise or a group of investment enterprises so long as the requisite capital and job creation results from each investor's contributed investment.*

2. *Such associations can fund sizeable investments; however, knowledgeable and talented corporate counsel is required for proper business formation involving large numbers of investors so as to structure each investor's contributions in a manner that will realize the requisite capital investment and job creation, ensure each investor's participation in important policy decisions, and secure each investor a maximum returned profit.*

**Q. What is a "conflict of interest?" Why and how should it be avoided by EB5 investors?**

1. *Conflict of interest usually pertains to advocating in a matter that involves two opposed parties. However, a conflict will exist with competing and conflicting concerns over a same matter*

*migration law or criminal law with immigration consequences.*

(2) *Lawful permanent residents are not restricted in their employment, except for a few government jobs requiring U.S. citizenship, nor are they restricted in their ability to internationally travel, except for lengthy indefinite departures.*

(3) *Lawful permanent residents who immigrate through the EB5 program generally may apply for U.S. citizenship four years and nine months after being granted permanent resident status, assuming they have lived in the U.S. for at least 30 months of that time period and, with certain exceptions, they have not been outside the U.S. for over 180 days during any one departure.*

2. *Obligations*

(1) *Lawful permanent residents must pay taxes on their worldwide income, subject to various reciprocal treaties between the U.S. and their home country, which may relieve them, as permanent residents of the U.S., from the burden of double taxation. It is advised that a foreign tax specialist be consulted by individuals who desire to immigrate to the United States and may confront this concern.*

(2) *Prior to departing from the United States for more than 180 days, a permanent resident must apply for a re-entry permit. Otherwise, any absence from the U.S. for over 180 days will risk an examination at a port of entry upon return for a CBP officer to determine whether or not the permanent resident has abandoned immigrant status. Departures beyond a year, without applying for a re-entry permit, provide grounds for a CBP agent to place the permanent resident in removal proceedings upon return to demonstrate that permanent resident status was not abandoned.*

**C. What are the basic requirements to immigrate to the United States through investment under EB5 classification so as to become a permanent resident?**

1. *The immigrant investor either must invest \$1 million in any general location, or \$500,000 in one of two kinds of designated areas:*

*(1) with a rate of unemployment equaling 150% of the national rate, or*

*(2) a rural community, with a population of 20,000 or less persons.*

2. *Capital can be invested to develop investment enterprises from the ground up, or to purchase existing businesses for expansion and job creation.*

3. *The immigrant investor has two years to create 10 full time permanent jobs for US citizens and immigrants authorized for employment in the U.S. The more jobs created at the time of or immediately after applying for EB5 status, the easier it is for the CIS to approve the EB5 petition. Jobs created for the investor, his or her spouse, and his or her sons or daughters are not considered as qualifying jobs.*

4. *Alternatively, the investor can save ten jobs by investing in a "troubled business", which is a business that either has suffered a 10% loss during each of two successive years or a 20% loss during a two year period. The saved jobs must be maintained throughout the two years of the investor's conditional permanent residence, as described immediately below, at Question D.*

5. *All capital invested must come from lawful sources, and not from criminal activity or organizations.*

6. *The investors must be responsible to participate in making high level policy decisions of the business enterprise created by his or her investment capital.*

*ance with these other statutes can have equally disastrous consequences to the immigrant investor as with non-compliance with the INA if the regional center loses its designation as a result.*

**O. What do these statutes regulate, and why is it so important to comply with them?**

1. *The Securities and Exchange Act regulates securities, which are defined as documents which involve the exchange of substantial capital for investment. Securities law protects investors by requiring complete disclosure of all material facts relating to an investment decision. Securities law also regulates licensure for professionals who facilitate investment that is documented through use of securities by ensuring, as a condition to licensure, that they understand both the technical aspects of financial transactions and the professional ethical obligation to comply with the need to fully disclose all facts that are material to the investment decision.*

2. *The Internal Revenue Act governs the taxation of individuals and business entities for the funding of national governance and defense, public works, federal means tested benefits for incapacitated and involuntarily unemployed persons and their dependents, social security retirement benefits, and other similar expenditures.*

3. *The Homeland Security Act of 2001 & 2003 implements national security measures under the direction of the Department of Homeland Security, through the administration of immigration benefits through the CIS, enforcement against immigrant violators through ICE, and customs and personal border inspection through CBP. The DHS also regulates national security measures that are infused throughout several federal law enforcement, security, and emergency readiness agencies. Finally, the DHS is authorized to gain access to private information for criminal investigation or national security purposes upon showing probable cause that*

*the regional center is being investigated by other federal agencies for suspected non-compliance with other federal laws. Investigation by other federal agencies becomes known to a target regional center and must be disclosed under federal law to any authorized business analyst, broker or agent upon inquiry.*

(7) *Finally, quite a few regional centers have been subject to federal litigation challenging their compliance with federal immigration laws. Such litigation takes place when brought by an individual investor after his initial application is denied or conditions are not removed. Litigation has also been brought by a regional center challenging removal of its designation by the DHS. The number of lawsuits involving EB5 regional centers can be discovered by a minimal amount of internet research. As many of these lawsuits have not been successful, the concerned immigrant investors have lost investment capital, and the investors and their families have lost permanent resident status. Therefore, should the use of indirect employment and less investor direct involvement, which accompanies Regional Centers, remain attractive, it is imperative that an independent licensed investment advisor thoroughly research this decision.*

**N. What other federal statutes, aside from the Immigration & Nationality Act, must be of concern to an EB5 investor?**

1. *There are several federal statutes that must be complied with by each investor in the EB5 program. These include but are not limited to the Securities and Exchange Act, the Internal Revenue Act, the Homeland Security Act of 2001 & 2003, the Bank Secrecy Act and the Racketeer Influenced and Corrupt Organizations provisions, (RICO), of the US Criminal Code.*

2. *These other federal statutes require fewer attorney hours to ensure compliance than do the principal concerns of the Immigration and Nationality Act, INA. However, non-compli-*

**D. What conditions are imposed upon immigrants through EB5 investment upon successfully becoming lawful permanent residents of the United States?**

1. *Approval of an EB5 petition and accompany application to adjust status leads to a conditional grant of permanent resident status for two years. During a three month period starting 90 days prior to the lapse of this two year "conditional" period, the immigrant must file to remove conditions.*

2. *By tracking detailed chronological business documentation accrued during the two year period of conditional permanent residency and submitting this documentation to the CIS to support a petition to remove conditions on residence, the CIS is enabled to ensure that investment has been genuine, sufficient and irretrievable, and that job-creation requirements have been met.*

**E. What is an irretrievable investment.**

1. *This means that an investment cannot be divested merely through an unguaranteed business or stock sale and not merely by withdrawal or through a promissory note at a guaranteed return, in the manner of a guaranteed loan.*

**F. How is total loss of investment capital prevented if a petition filed by an immigrant investor is not approved?**

1. *Escrow accounts are generally created to hold investment capital pending approval of an EB5 petition, wherein investment is funded and allocated as detailed within a business plan that accompanies the EB5 petition.*

2. *A thorough business plan must support the EB5 petition, which includes a local and regional market plan and analysis, a description of business formation, site development, employment creation within the local economy, marketing plans, sales projections, and financial projections for year 1, 3 & 5 to include income and expense reports, all of which must explain why the future*

*business will be successful.*

3. *Applications to removal conditions from residence will reveal the full extent to which funds have been invested and jobs created in conformance with projections.*

## **G. What is a direct investment in an EB5 enterprise?**

1. *Direct investments are either created by the investor from the ground up, are purchased from an owner who is selling their business.*

2. *Investment in a pre-existing business must either save the “troubled business” or expand the business so as to comply with EB5 job creation requirements.*

## **H. What are the benefits and risks of direct investment?**

1. *Benefits:*

(1) *Direct investment tends to run administratively leaner than regional centers, which are described below at Questions I thru M, with fewer sales people and a stronger bottom line than most regional centers.*

(2) *Direct investment involves the investment in the creation of a business or the purchase of a business for expansion so as to comply with EB5 job creation requirements, which is more easily monitored and controlled through direct job creation with less reliance on econometric studies, as further explained below.*

(3) *While direct investment enterprises are not pre-designated in any manner by the United States government, as happens with the creation of a regional center, (described below), such designation is immaterial to qualify or disqualify the business enterprise. Rather, an application to create a regional center involves substantial legal fees, detracts from business profit, and this loss must be recouped by originators out of concern for the center’s bottom line. These expenses are not part of the financial plan of a direct investment, leaving a greater return on investment.*

(2) *Regional centers tend to have much higher overhead. They employ more than the routine number of promotional personnel generally employed by a business, and sometimes contractually require collateral service providers that may be compensated above the market rate. Some have exit strategies that also excise additional payments from the investor. Finally, regional centers often have a heavier administrative overhead, compared to direct investment. Thus, independent licensed business analysts must be careful to uncover these factors, when present, prior to investment.*

(3) *Designation of a regional center is in no way a guarantee of a profitable investment. CIS is not approving Regional Centers based on financial stability or business strength, but only based their compliance with the statutory requirements of the INA as a condition to their creation. DHS does not investigate the backgrounds of the managing team. Nor is the regional center’s creation proof of its ongoing financial stability of the company/project after they are created. Thus, extra scrutiny and diligent research is required, particularly for newer regional centers, simply because regional centers can frequently be more bureaucratic and complicated in their structure than are direct investments.*

(4) *The number of regional centers have more than tripled during the Obama administration. Newer regional centers lack a track record to measure their success.*

(5) *As regional center designation entails DHS scrutiny over compliance with immigration laws when the center is created, this scrutiny is renewed and ongoing with each new investor. Such compliance after creation cannot be guaranteed merely by DHS designation.*

(6) *The DHS will not monitor the regional center’s compliance with other federal laws, as discussed below at Questions N & O, when regional centers are created. The DHS does not repeatedly or randomly investigate if*

## **M. What are the benefits and risks of regional centers?**

### **1. Benefits-**

(1) Because Regional Centers have their own management team in place, often investment requires the least allowable in person involvement from the immigrant investor, particularly where the regional center has an established track record.

(2) A select number of successful and well established Regional Centers can show you their track record and provide the immigrant investor a greater measure of assurance that all applications will be successful.

(3) Well established Regional Centers require less work from private counsel resulting in lower attorney fees, as documentation is fully prepared and readily available pertaining to the regional center's formation, collateral funding and ongoing management. This documentation can be repeatedly relied upon by each subsequent investor.

(4) Regional Centers rely on indirect job creation, meaning that a percentage of the ten jobs created per investor are created through suppliers, associated contractors, and commercial purchasers of the investment enterprise product or service as well as jobs created to respond to the purchasing power of the ten new employees. These indirect jobs must be explained through highly detailed technical econometric studies, that entail a greater extent of analysis and also a greater risk where a proven success record has not been established.

(5) Origination costs and legal fees have been absorbed long ago by more well established regional centers and will not detract from their present bottom line.

### **2. Risks-**

(1) Regional Centers may provide access to permanent resident status, but, they are generally more conservative and less profitable investment opportunities than direct investments.

(4) Through direct investment, the immigrant entrepreneur can create his or her own management team if personal presence at the business sight is impractical or not possible.

(5) Direct investments have easy exit strategies. Upon removal of condition, business can be sold by the owner or through a broker, or shares can be sold within or outside the company, with no other intermediate participants.

### **2. Risks:**

(1) Direct investments rely on direct job creation, which entail ongoing greater operating payroll and payroll taxes, as compared to regional centers, which are described below at Questions I thru M, and which allow for indirect job creation which is measured through detailed econometric studies of labor and consumer markets where the regional center is located.

(2) Responsibility for more direct employees entails an absolute need for a strong and trusted management team if the immigrant investor cannot be present in the United States for significant periods of time, which is difficult to create from scratch. U.S. management development companies can fill this role, and so too can trusted non-immigrants from the investor's home country, whose employment is not factored among the requisite ten jobs.

## **I. What is a regional center?**

1. Regional centers are designated by the United States Department of Homeland Security, (DHS), US Citizenship and Immigration Service, (CIS), to receive and invest capital from investors who seek to become permanent residents as a result of investing in United States through an EB5 business.

2. Designation is a manner in which the U.S. Federal government promotes EB5 investment. It does not add value to the investment, as discussed below.

3. Each regional center is created and man-

aged by a team of individuals acting in an executive capacity to allocate and direct investment capital.

**J. What must be determined during the designation by the CIS of a Regional Center?**

1. A CIS examiner uses econometric studies submitted by the applicant to forecast the regional economy and describe the form and variety of business(es) to be developed by the capital invested in the proposed regional center, so as to consider, among others, the following factors:

(1) the viability of the center's plan to directly or indirectly create ten full time jobs from each individual investment of \$1 million or \$1/2 million dollars within a particular geographic area,

(2) actual or conceptual individualized business plans for target businesses that the EB5 investment capital will be allocated to develop, with strong economic analysis as to how development is projected in light of forecasted regional and national economic conditions,

(3) the economic impact that the regional center will have on the regional and national economy,

2. The source of all funding sources which are used for investment(s), including and apart from immigrant capital are reviewed.

3. The CIS examiner also reviews the expected profit of the regional center as an entity, and individual remuneration by means of fees, surcharges & remittances to be collected by its individual managers and agents.

4. The methods used to qualify and track investment capital from the investor are reviewed so as to ensure that each investor is responsible to invest \$1 million or a \$500,000 and to create or save 10 jobs for U.S. workers.

5. An explanation of past, present and future methods of regional center promotion and investor recruitment is reviewed.

6. An explanation of methods to be deployed to ensure that invested capital is derived from lawful and not criminal activity must also be explained

**K. What kinds of persons or entities can file to create a regional center?**

1. Regional centers can be managed in an executive capacity by private persons, by business entities directed by private persons, and by state, county or municipal public officials, acting on their own or as officials within governmental agencies.

**L. What does CIS designation of a regional center not guarantee?**

1. Regional centers are approved according to the contents of their applications, but not according to the personal histories and track records of the persons who comprise their management team. As such, regional centers are not warranted by the US government as guaranteeing a rate of return. Regional centers must therefore be researched and analyzed with the same level of due diligence as with any investment.

2. Regional centers are not rigorously monitored for ongoing compliance with other laws that are not directly related to the Immigration and Nationality Act, but are of equal importance, including but not limited to securities laws, banking and international monetary transfer laws, national security law, and federal and state tax law, etc.

3. Immigrant investors are therefore advised to work with independent licensed investment advisors, brokers or agents, whether investing in a direct investment or a regional center. Licensed business advisors, brokers or agents are held to a higher standard of care within their focused discipline and can be found civilly liable for any failure to exercise the requisite level of professional care.