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Investor Visas Rebound as Immigrants Seek Green Card Fast Track

By Andrew Kreighbaum

Deep Dive

- \$5 billion invested since lawmakers reauthorized EB-5 program
- Offers quicker pathway to green card, avoids visa backlogs

An accelerated path to green cards for immigrant investors has quickly rebounded two years after its revival, with capital investments on track this year to surpass those made in the last year before the program was frozen.

Investors have filed more than 6,500 immigrant petitions for EB-5 visas since lawmakers in 2022 restored an option for them to pool their funds in US businesses to qualify for permanent residency. And more than \$5.2 billion in foreign capital has been raised for 400 new EB-5 projects since the restart.

Those numbers are still far below the industry's peak a decade ago. But a program previously plagued by fraud scandals is now thriving, Bill Gresser, president of EB-5 New York State LLC, told a gathering of attorneys and others connected to the program in Miami earlier this fall.

With years-long green card wait times ticking up for many skilled immigrants—before delays are anticipated to worsen under the incoming Trump administration—forking over thousands into investor visas is viewed by many as an increasingly attractive option.

“We see projects coming to us every day,” Gesser said. “We see qualified investors every day.”

The EB-5 program allows immigrant investors to secure a green card by putting up a minimum amount in a business that creates jobs in the US. A pilot program first created in 1992 allows investors to pool funds in large enterprises known as regional centers.

Interest in the program has been quick to rebound in part because of long backlogs for more typical employment-based green cards. But the EB-5 industry has frequently found itself in court with US Citizenship and Immigration Services over the handling of the restart.

It’s not yet clear how the program may fare under an incoming Trump administration that has promised tougher scrutiny of immigration petitions overall, but EB-5 advocates don’t believe the program will be on the chopping block. President-elect Donald Trump’s first administration sought to hike the minimum investment amounts for the program. But members of his circle have made use of the program themselves, including Trump son-in-law and former White House adviser Jared Kushner, who used the program to raise foreign capital for luxury developments. The eponymous Trump Tower also received financial backing from EB-5 investors.

“My past experience with this administration that’s coming in has been EB-5 is the type of immigrant we want,” said Laura Foote Reiff, a shareholder at Greenberg Traurig LLP. “They’ve got money and they’re creating jobs.”

Visa Release Valve

The regional center program, which requires periodic reauthorization from Congress, accounts for the majority of applicants and investments through the larger EB-5 program. Going that route is more attractive than direct investing for many participants because it requires less active involvement by would-be immigrants as those enterprises have experience navigating the requirements of the program.

Authorization for the regional center program lapsed in 2021 as lawmakers failed to reach consensus on competing proposals to address fraud and re-define which type of projects would qualify for lower minimum investments.

A reauthorization bill slipped into a 2022 spending package added new reporting requirements for businesses and raised minimum investment amounts to \$1,050,000 or \$800,000 for high-unemployment areas. A higher price tag for the visas after the restart hasn’t deterred investors, though. A surge in petitions has been driven by Indian and Chinese immigrants, who face the longest wait times for more typical employment-based green cards.

The new law allows those applicants to submit their immigrant investor petition and apply to adjust status from a nonimmigrant visa to permanent resident at the same time based on visa availability, meaning they can get authorization for employment and travel outside the US while the green card application is pending.

Capital invested through the program has also shifted to rural areas and those with high unemployment—a goal of lawmakers—thanks to visas set aside for those projects. The reauthorization reserved a fifth of visas for rural endeavors, 10% for high-unemployment areas, and 2% for infrastructure projects.

“One of the reasons EB-5 is so big is all of the other employment-based categories are backlogged,” said Joey Barnett, a partner at Wolfsdorf Rosenthal LLP. “Even if you’re eligible for it, you can’t get a green card today. But you can with these new reserve visa categories through EB-5.”

Bumpy Restart Process

EB-5 advocates say the reauthorization made the visas a costlier option, but also offers more security to potential investors.

“It’s a different animal,” said Ronnie Fieldstone, a partner in the Miami office of **Saul Ewing Arnstein & Lehr** LLP. “It’s more expensive, it’s more regulated. As a result, we’re going to see a lot fewer problems going forward than we did before with EB-5 fraud.”

Sen. Chuck Grassley, the Iowa Republican who drove the reauthorization effort, is continuing to monitor whether the law is implemented as lawmakers intended, said Hannah Akey, Grassley’s deputy press secretary.

“Congress passed the EB-5 Reform and Integrity Act to crack down on bad actors and restore the program’s central purpose of promoting investment in rural and economically challenged communities,” she said.

Although the program has quickly rebuilt interest, it’s run into headwinds with frequent litigation popping up over USCIS policies. A trade group sued months after the restart over the agency said it was dropping authorization for regional centers approved before the reauthorization law.

And a new round of litigation was sparked this summer after USCIS sent notices to dozens of regional centers that they would lose approval over unpaid program integrity fees.

Part of the problem, immigration attorneys say, is USCIS has never released regulations interpreting the details of the 2022 reauthorization of the program, leaving many questions unanswered until a lawsuit is filed.

“A lot of uncertainty could have been answered through a healthy regulatory process,” Greenberg Traurig’s Reiff said.

To contact the reporter on this story: Andrew Kreighbaum in Washington at akreighbaum@bloombergindustry.com

To contact the editors responsible for this story: Genevieve Douglas at gdouglas@bloomberglaw.com; Rebekah Mintzer at rmintzer@bloombergindustry.com

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