



High Skilled Visas

Overview of the SKILLS Visa Act Entrepreneur and Investor Provisions H.R. 2131 Voted out of House Judiciary 6/27/2013

Entrepreneur Green Cards

Overview of Entrepreneur Provisions

- The bill creates two new green card programs for alien entrepreneurs, with a total of 10,000 green cards available a year.
- The first program is for venture capital backed entrepreneurs who attract investment of at least \$500,000 from a qualified venture-capital operating company or at least \$100,000 from a qualified angel investor. Such entrepreneurs would be given conditional green cards and up to three years to create jobs for at least five American workers and two years to raise an additional \$1,000,000 in capital or generate not less than \$1,000,000 in revenue.
- The second program is for entrepreneurs who have been operating businesses in the U.S. under the E-2 treaty investor visa program. The bill would make green cards available to E-2 treaty investors who have maintained their status for a minimum of 10 years and have created jobs for at least five U.S. workers for a minimum of 10 years.

Entrepreneur Provisions Technical Summary

Numbers

- 10,000 visas annually

Venture Capital-Backed Start-up Entrepreneurs

- Alien must be intending to start a new business in the U.S.;
- Alien has received an investment of at least \$500,000 from a qualified venture capital operating company or 1 or more qualified angel investors (of which at least 1 investor is providing \$100,000); and
- The business will benefit the U.S. economy and within 2 years of being issued a visa will create at least 5 U.S. jobs and raise at least an additional \$1 million in capital investment or \$1 million in revenue.
- Alien is granted conditional permanent resident status, along with spouse and children.
- If DHS determines before the 2nd anniversary of the alien's conditional permanent resident status that the requirement investment in the business was intended as a means of evading immigration law, any requisite capital to be invested has not been invested, or was not actively in the process of being invested, or the alien was not sustaining the job creation, revenue, or investment actions throughout the period of the alien's residence in the U.S. or the alien wasn't conforming to any other requirements – DHS must terminate the permanent residence of the alien and their family.
- An alien whose permanent residence has been terminated may request a review of the determination in a removal proceeding. Burden of proof is on DHS during that proceeding to establish, by a preponderance of evidence that the alien was not fulfilling a requirement of the visa.

- To remove conditions the alien entrepreneur must submit to DHS within 90 days of their second anniversary a petition requesting removal of conditions with evidence that they have created requisite jobs and received requisite investment/revenue and must appear for a personal interview before an officer and employee of DHS.
- If an alien entrepreneur doesn't file an application for removal of conditions or doesn't show up for the in person interview without good cause, DHS is required to terminate the permanent residence status of the alien and their family on the alien's 2nd anniversary of lawful admission for permanent residence.
- Alien can receive a hearing while in removal proceedings if their status is terminated (due to failure to apply to remove conditions or show up at interview) but burden of proof is on the alien.
- After alien entrepreneur applies to remove conditions and has an interview, DHS then has 90 days to decide whether to remove conditions and provide alien with permanent resident status.
- If the alien's petition to remove conditions demonstrates that the facts and information are true, DHS may extend the conditional status for an additional year at the end of which the alien must file a petition within 30 days after the third anniversary of their lawful admission demonstrating that the alien has satisfied all requirements of the visa.
- Details of the petition, must contain facts and information demonstrating –
 - Any requisite capital to be invested had been invested, or was actively in the process of being invested; and
 - The alien sustained the investment throughout the period of the alien's residence in the U.S.;
 - The alien created the requisite employment or the alien is actively in the process of creating the employment and will create such employment before the 3rd anniversary; and
 - The alien is conforming to all other requirements of the visa.
- Under entrepreneur visa, time spent in conditional permanent resident status will count towards naturalization.
- Inflation Adjustment
 - After first 1.5 years, and then annually thereafter, inflation of monetary requirements by the percentage change in the Consumer Price Index for the month of June from the preceding year.

Treaty Investors

- Immigrants who are in the U.S. on an E-2 treaty investor visa and who have maintained that status for at least 10 years, have benefitted the U.S. economy, and have created full time employment for at least 5 U.S. workers for a minimum of 10 years can receive a green card.

Definitions for Entrepreneur Green Cards

- Investment – Does not include any assets acquired, directly or indirectly by unlawful means.
- Qualified Angel Investor – An individual who is an accredited investor, is a U.S. citizen or an LPR, and has made at least 2 equity investments of not less \$50,000 in each of the 3 years before the date of a petition by the qualified immigrant.
- Qualified Venture Capital Operating Company – Is classified as a venture capital operating company under 2510.3-101(d) of title 29 CFR, is based in the U.S., is owned and controlled by U.S. citizens or LPRs, has capital commitments of at least \$10 million, has been operating for at least 2 years, and has made at least 2 investments of \$500,000 in each of the 2 years before the immigrant petitions.



- U.S. worker – An employee (other than the immigrant or the immigrant’s spouse, sons or daughters), who is a U.S. citizen or is an LPR, is admitted as a refugee, has been granted asylum, or is an immigrant authorized to be employed in the U.S.
- Commercial enterprise includes a limited partnership.

Investor Green Cards

Overview of Investor Green Card Provisions

- Revisions to existing Employment-Based Fifth Preference (EB-5) program.
- Increase, indexed to inflation, minimum investment amount, from the current levels of \$1 million, or \$500,000 in targeted employment area.
- Make regional center program permanent.

EB-5 Investor and EB-5 Regional Center Revisions

Changes to the General EB-5 Program

- The minimum investment amounts (currently \$500,000 or \$1 million) will be increased to reflect the change in value of the dollar from the program’s creation in 1990 to the present day and will be prospectively indexed for future inflation – using CPI (Consumer Price Index) data.
- Assets acquired directly or indirectly through unlawful means cannot be used to meet the minimum investment requirements of the program.
- DHS currently requires that the job creation requirement (10 jobs per investor) have been met two years after the grant of a conditional green when an investor seeks the removal of the conditional status of their green card “or at a reasonable time thereafter.” The bill provides that the required jobs must actually exist at the time that the conditional status is removed and allows DHS to extend the conditional status for an additional year in order to give an investor extra time to create the required jobs (3 years total for job creation). Alien has 30 days after third anniversary to file a petition removing conditions.
- The EB-5 program requires that an alien investor invest at least \$1,000,000 (new, higher, indexed amount will be required under House bill) or at least \$500,000 (new, higher, indexed investment amount will be needed) if the business is in a “targeted employment area” – a rural area or an area that has an unemployment rate of at least 150 of the national rate. In order to prevent the “gerrymandering” of low-unemployment areas into targeted employment areas, the bill provides that 1) the relevant “targeted employment area” must fit entirely within a geographical unit that DOL has determined has an unemployment rate of at least 150 percent of the national rate, 2) the Secretary of Labor shall set forth a uniform methodology for determining whether an area qualifies as having unemployment of at least 150 percent of the national rate, and 3) DHS is not bound by the decision of any other entity that a particular area has experienced high unemployment. The current definition of targeted unemployment area is a rural area or an area where unemployment is at least 150 percent of the national average rate.

Changes to the EB-5 Regional Center Program

- The bill makes the regional center pilot program permanent.
- In order to deter fraud, the bill bars persons from involvement in regional centers who 1) have committed crimes that are considered aggravated felonies under the INA, 2) would be inadmissible pursuant to the security and terrorism-related grounds of inadmissibility (if they were aliens seeking admission), or 3) have been convicted of criminal securities fraud or have been found to have engaged in civil securities fraud.



- The bill clarifies and expands DHS’s authority to perform criminal records and background checks on regional center managers, owners, administrators, members, and others who have significant responsibility in the regional center. DHS may terminate regional centers from participation in EB-5 program if prohibited persons are involved in the centers or the centers or provide false information in the context of the background checks.
- The bill requires regional centers to certify compliance with Federal securities laws.
- DHS may terminate regional centers for failure to make the necessary certifications or for securities law violations. Regional centers must certify that they are in compliance with securities law annually. DHS is required to immediately terminate the designation of any regional center that doesn’t provide the annual certification.
- DHS may suspend or terminate the designation of any regional center or any party to the regional center if DHS determines that the RC or party:
 - Is permanently or temporarily enjoined by order, judgment, or decree of any court in connection with the purchase or sale of a security;
 - Is subject to any order of the SEC that bars such person from association with an SEC regulated entity, or constitutes a final order based on violations in connection with the purchase or sale of a security;
 - Has been convicted of violating, or found to have violated, a fraud provision of Federal securities laws; or
 - Knowingly submitted or caused to be submitted a certification (following securities laws) that contained an untrue statement of material fact, or omitted to state a material fact necessary, in order to make the statements made, in light of the circumstances under which they were made, not misleading.
- Nothing in this section will impair or limit the authority of the SEC.
- Party to the regional center includes the regional center, its agents, servants, employees, attorneys, or any persons in active concert or participation with the regional center.
- Amendments to EB-5 and regional center program will apply to aliens filing petitions on or after enactment, to a regional center designated before, on, or after enactment, to any application to designate a regional center and any person involved with or party to a regional center that is pending on enactment.
- Inflation adjustment goes into effect on date of enactment.

