

Immigration Law

EB-5 RIA and its Potential Impact to the LATAM Immigration Market

The passage of the EB-5 Reform and Integrity Act (RIA) in 2022, coupled with political uncertainty and economic challenges in Latin America, offers a unique opportunity for investors from this region seeking US permanent residency (green card status).

Many countries in Latin America are struggling with high inflation rates, political instability, and economic challenges. Recent political shifts in the region have raised concerns about government interference that could impact investments. Through the EB-5 regional center program, individuals can reduce their exposure to these risks by relocating to the United States.

The EB-5 visa category offers a path to a green card through a direct investment or a regional center investment, with the latter as the more popular route since it allows for a passive investment. The RIA brought stability and clarity to the EB-5 program and promotes investment in rural areas by directing USCIS to prioritize these applications and by allocating a significant number of visa quotas to such investments. It also provides additional benefits to investors, including permitting good-faith investors to complete the permanent residence process even in cases in which the EB-5 regional center is terminated or in the event the regional center program expires. Additionally, investors who are present in the US in valid nonimmigrant status and for whom an immigrant visa is immediately available can now file their EB-5 petitions at the same time as their applications for adjustment of status to permanent residence, which allows them to apply for employment authorization and travel permits as green card applicants while their cases are pending. However, the RIA also includes increases to the investment thresholds required to benefit from the EB-5 program. Specifically, the RIA has increased the minimum investment in EB-5 projects from \$1,000,000 to \$1,050,000 and has increased the minimum investment in rural areas or areas of high unemployment, also known as targeted employment areas (TEAs), from \$500,000 to \$800,000.

Individuals from Latin America already in the US pursuant to valid visas, especially F-1 student visa holders, can take advantage of the EB-5 regional center program as an alternative option to more traditional work visas, such as the H-1B visa which is subject to an annual lottery with



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low annual rates of selection. The EB-5 petition and I-485 adjustment of status application can be filed concurrently, as Latin American countries are not subject to green card backlogs, which allows the investor to obtain a temporary work and travel permit independent of any underlying temporary visa and that is not attached to any specific employer, allowing greater mobility within the job market. Given that certain US work visas, as well as the F-1 visa for students, are temporary intent visas, meaning they require that the visa holder does not have the intention of remaining in the US permanently, it is important that the investor consult with an attorney before filing the EB-5 petition and the adjustment of status application.

The EB-5 regional center program presents a great opportunity for individuals from Latin America. However, in light of the many options for regional center investments, investors should consult with experienced attorneys that can conduct immigration due diligence, evaluate whether the project meets the USCIS criteria, and provide guidance and support throughout the application process. Investors should also partner with their financial advisors to evaluate the economic and financial aspects of the project.



Practice Area News

Reform and Integrity Act of 2022 – Government Reauthorizes EB-5 Regional Center Program. In March 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law resulting in the reauthorization of the program through Fiscal Year 2027. The new minimum investment is \$1,050,000 for standard investments and \$800,000 for investments in Targeted Employment Areas (TEAs). DHS was vested with the sole authority to designate TEAs and USCIS can now accept concurrent filing of EB-5 petitions and I-485 adjustment of status applications for investors with immediately available immigrant visas. Read more [HERE](#).

Behring Regional Center LLC v. Mayorkas, Case 3:22-cv-03948-VC. As part of the court settlement in Behring Regional Center LLC v. Mayorkas, USCIS agreed that regional centers that were designated before the passage of the Integrity Act would remain designated. To keep their designation for the purpose of sponsoring new projects and new investors under the Integrity Act, previously approved regional centers will need to file an Application for Regional Center Designation amendment and show that they are in compliance with all of the requirements under that Act. Read more [HERE](#).

USCIS Amends Policy Manual to Reflect EB-5 Reform and Integrity Act of 2022. In October 2022, USCIS amended the Policy Manual to align it with certain changes made by the new law including: updating the investment amounts and the definition of targeted employment area; aligning USCIS policy on further deployment with the new statute; and permitting concurrent filing for adjustment of status and priority date retention. USCIS anticipates making future updates to this guidance as they develop policy. Read more [HERE](#).

In the Firm

Fragomen released its 2023 Worldwide Immigration Trends Report, which analyzes evolving political, economic and cultural trends to track the key drivers and themes of immigration policy. The report found [HERE](#), helps the employer community better understand and meet current and emerging immigration trends. The firm also supplements the report quarterly, offering updated insights into newly breaking trends and happenings.