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Policy Alert

SUBJECT: Job Creation and Capital At Risk Requirements for Adjudication of Form I-526 and Form I-829

Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) to provide further guidance regarding the job creation and capital at risk requirements for Form I-526, Immigrant Petition by Alien Entrepreneur, and Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

Background

The Immigration and Nationality Act (INA) makes visas available to qualified foreign nationals who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers.¹ Congress created this employment-based fifth preference immigrant visa category (EB-5) to benefit the U.S. economy.

USCIS published a draft memorandum in August 2015, *Guidance on the Job Creation Requirement and Sustainment of the Investment for EB-5 Adjudication of Form I-526 and Form I-829*.² This Policy Manual update is effective upon publication and provides guidance on some of the issues raised in that draft memorandum and further clarifies guidance already published in the USCIS Policy Manual.

Policy Highlights

- An investor must continue to be eligible for the EB-5 visa classification throughout the adjudication of his or her Form I-526 and until he or she obtains conditional permanent resident status by making an investment that remains “at risk.”
- An investor must also sustain his or her investment “at risk” throughout the 2-year period of conditional permanent residence to be eligible for removal of conditions on his or her permanent resident status.
- Further deployment of an investor’s capital may be used to meet the capital at risk requirement under certain circumstances.

Citation

Volume 6: Immigrants, Part G, Investors [[6 USCIS-PM G](#)].

¹ See [INA 203\(b\)\(5\)](#).

² See [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft Memorandum for Comment/PED-Draft Policy Memo Guidance on the Job Creation Requirement and Sustainme.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/PED-Draft%20Policy%20Memo%20Guidance%20on%20the%20Job%20Creation%20Requirement%20and%20Sustainme.pdf).