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To seek removal of the conditions on permanent resident status, the immigrant investor must file a Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I-829 (<http://www.uscis.gov/i-829>)) within 90 days prior to the 2-year anniversary of the date conditional permanent resident status was granted (for example, adjustment of status application was approved or investor admitted into the United States on an immigrant visa).

The immigrant investor must submit the following evidence with his or her petition to remove conditions:

- Evidence that the immigrant investor invested, or was actively in the process of investing the required capital and sustained the investment throughout the period of the immigrant investor's residence in the United States; and
- Evidence that the new commercial enterprise created or can be expected to create, within a reasonable time, at least 10 full-time positions for qualifying employees. ^[1] In the case of a troubled business, the investor must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. ^[2]

A. Evidence of Investment and Sustainment

1. Investment

The petition must be accompanied by evidence that the immigrant investor invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence. ^[3]

2. Sustainment of the Investment

The immigrant investor must provide evidence that he or she sustained the investment throughout the period of his or her status as a conditional permanent resident of the United States.

USCIS considers the immigrant investor to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement and continuously maintained his or her capital investment over the sustainment period. ^[4] When filing a petition to remove conditions, the full amount of required capital does not need to have been invested, but the immigrant investor must provide evidence that he or she has substantially met the requirement. The evidence may include, but is not limited to:

- Bank statements;
- Invoices;
- Receipts;
- Contracts;
- Business licenses;
- Federal or state income tax returns; and
- Federal or state quarterly tax statements. ^[5]

B. Evidence of Job Creation

The immigrant investor can meet the job creation requirement by showing that at least 10 full-time positions for qualifying employees have been created, or will be created within a reasonable time. The non-regional center investor must show that the new commercial enterprise directly created these full-time positions for qualifying employees. The regional center investor may show that these jobs were directly or indirectly created by the new commercial enterprise. The evidence to prove job creation may include, but is not limited to the following:

- For direct jobs created as a result of the immigrant investor's investment, evidence such as payroll records, relevant tax documents, and Employment Eligibility Verification (Form I-9 (<http://www.uscis.gov/i-9>)) showing employment by the new commercial enterprise;
- For direct jobs maintained or created in a troubled business, evidence such as payroll records, relevant tax documents, and Form I-9 (<https://www.uscis.gov/i-9>) showing employment at the time of investment and at the time of filing the petition to remove the conditions on residence; or
- For jobs created indirectly as a result of an investment in the regional center context, reasonable methodologies, including multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices.

If the regional center investor seeks to demonstrate job creation through the use of an economic input-output model, the investor must demonstrate that the methodology is reasonable. Further, the investor must submit relevant documents previously submitted with the Immigrant Petition by Alien Entrepreneur (Form I-526 (<http://www.uscis.gov/i-526>)), including the comprehensive business plan and economic impact analysis, if he or she is relying on such documents to meet his or her burden of proof. This information is necessary to indicate whether there are material changes that would impact deference.

Where the inputs into the model reflect jobs created directly at the new commercial enterprise or job-creating entity, the investor must demonstrate that the direct jobs input is reasonable. Relevant documentation may include Form I-9 (<https://www.uscis.gov/i-9>), tax or payroll records, or if the jobs are not yet in existence, a comprehensive business plan demonstrating how many jobs will be created and when the jobs will be created.

If the inputs into the model reflect expenditures, the investor must demonstrate that the expenditures input is reasonable. Relevant documentation may include receipts and other financial records for expenditures that have occurred and a detailed projection of sales, costs, and income projections such as a pro-forma cash flow statement associated with the business plan for expenditures that will occur.

If the inputs into the model reflect revenues, the investor must demonstrate the revenues input is reasonable. Relevant documentation may include tax or other financial records for revenues that have occurred or a detailed projection of sales, costs, and income projections such as a pro-forma income statement associated with the business plan for revenues that will occur.

In making the determination as to whether or not the immigrant investor has created the requisite number of jobs, USCIS does not require that the jobs still be in existence at the time of the petition to remove conditions adjudication in order to be credited to the investor. Instead, the job creation requirement is met if the investor can show that at least 10 full-time jobs for qualifying employees were created by the new commercial enterprise as a result of his or her investment and such jobs were considered to be permanent jobs when created. ^[6]

Full-time positions will be allocated to immigrant investors based on the date their petition to remove conditions was filed, unless otherwise stated in the relevant documents. ^[7] For example, if the new commercial enterprise creates 25 jobs, yet there are three immigrant investors associated with the new commercial enterprise, and the record is silent on the issue of allocation, the first two immigrant investors to file the petition to remove conditions will each get to count 10 of the 25 jobs. The third immigrant investor to file the petition to remove conditions is allocated the remaining five jobs.

Direct jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last for at least 2 years generally are not considered intermittent, temporary, seasonal, or transient in nature.

Although employment in some industries such as construction or tourism can be intermittent, temporary, seasonal or transient, officers should not exclude jobs simply because they fall into such industries. The focus of the adjudication will continue to be on whether the position, as described in the petition, is continuous full-time employment.

For example, if a petition reasonably describes the need for general laborers in a construction project that is expected to last several years and would require a minimum of 35 hours per week over the course of that project, the positions would meet the full-time employment requirement. However, if the same project called for electrical workers to provide services during a small number of 5-week periods over the course of the project, such positions would be deemed intermittent and not meet the definition of full-time employment.

1. Position Focused, Not Employee Focused

The full-time employment criterion focuses on the position, not the employee. Accordingly, the fact that the position may be filled by more than one employee does not exclude the position from consideration as full-time employment. For example, the positions described in the preceding paragraph would not be excluded from being considered full-time employment if the general laborers needed to fill the positions varied from day-to-day or week-to-week as long as the need for the positions remain constant.

2. Within a Reasonable Time Standard

A petitioner may demonstrate that jobs will be created within a reasonable period of time after adjudication of the Form I-829 (<http://www.uscis.gov/i-829>) petition. ^[8] This permits a degree of flexibility to account for the realities and unpredictability of starting a business venture, but it is not an open-ended allowance. The business plan submitted with the Form I-526 (<http://www.uscis.gov/i-526>) immigrant petition must establish a likelihood of job creation within the next 2 years, ^[9] demonstrating an expectation that EB-5 projects will generally create jobs within such a timeframe.

USCIS may determine, based upon a totality of the circumstances, that a lengthier timeframe is reasonable. USCIS has latitude under the law to request additional evidence concerning those circumstances. Because 2 years is the expected baseline period in which job creation will take place, jobs that will be created within a year of the 2-year anniversary of the immigrant investor's admission as a conditional permanent resident or adjustment to conditional permanent resident may generally be considered to be created within a reasonable period of time.

Jobs projected to be created more than 3 years after the immigrant investor's admission in, or adjustment to, conditional permanent resident status usually will not be considered to be created within a reasonable time unless extreme circumstances ^[10] are presented.

Not all of the goals of capital investment and job creation need to be fully realized before the conditions on the immigrant investor's status have been removed. The investor must establish that it is more likely than not that the investor is in substantial compliance with the capital requirements

and that the jobs will be created within a reasonable time.

C. Material Change

USCIS recognizes the process of carrying out a business plan and creating jobs depends on a wide array of variables of which an investor may not have any control. In order to provide flexibility to meet the realities of the business world, USCIS permits an immigrant investor who has been admitted to the United States on a conditional basis to remove those conditions when circumstances have changed.

An immigrant investor may proceed with the petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the initial Form I-526 (<http://www.uscis.gov/i-526>) immigrant petition, the requirements for the removal of conditions have been satisfied. USCIS does not deny petitions to remove conditions based solely on the failure to adhere to the business plan contained in the Form I-526 (<http://www.uscis.gov/i-526>) immigrant petition. An immigrant investor may pursue alternative business opportunities within an industry category not previously approved for the regional center.

Therefore, during the conditional residence period, an investment may be further deployed in a manner not contemplated in the initial Form I-526 (<http://www.uscis.gov/i-526>), as long as the further deployment otherwise satisfies the requirement to sustain the capital at risk. In addition, further deployment may be an option during the conditional residence period in various circumstances. For example, further deployment may be possible in cases where the requisite jobs were created by the investment in accordance with the business plan, as well as in cases where the requisite jobs were not created in accordance with the original business plan, and even if further deployment had not been contemplated at the time of the Form I-526 (<http://www.uscis.gov/i-526>) filing.

The initial Form I-526 (<http://www.uscis.gov/i-526>) immigrant petition must be filed in good faith and with full intention to follow the plan outlined in that petition. If the immigrant investor does not demonstrate that he or she filed the immigrant petition in good faith, USCIS may conclude that the investment in the commercial enterprise was made as a means of evading the immigration laws. Under these circumstances, USCIS may terminate the immigrant investor's conditional status. ^[11]

While USCIS allows this flexibility in Form I-829 (<http://www.uscis.gov/i-829>) filings, nothing in this policy relieves an immigrant investor from the requirements for removal of conditions. ^[12] Therefore, even in the event of a change in course, an immigrant investor must always be able to demonstrate that:

- The required funds were placed at risk throughout the period of the petitioner's conditional permanent residence in the United States;
- The required amount of capital was made available to the business or businesses most closely responsible for creating jobs (unless the job creation requirement has already been satisfied);

- This at-risk investment was sustained throughout the period of the petitioner’s conditional permanent residence in the United States; and
- The investor created (or maintained, if applicable), or can be expected to create within a reasonable period of time, the requisite number of jobs.

Accordingly, if an immigrant investor fails to meet any of these requirements, he or she would not be eligible for removal of conditions.

Further, with respect to the impact of regional center termination, an immigrant investor’s conditional permanent resident status, if already obtained, is not automatically terminated if he or she has invested in a new commercial enterprise associated with a regional center that USCIS terminates. The conditional permanent resident investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements, including through reliance on indirect job creation.

D. Extension of Conditional Permanent Residence While Form I-829 is Pending

USCIS automatically extends the conditional permanent resident status of an immigrant investor and certain dependents for 1 year upon receipt of a properly filed Form I-829. ^[13] The receipt notice along with the immigrant’s permanent resident card provides documentation for travel, employment, or other situations in which evidence of conditional permanent resident status is required.

Within 30 days of the expiration of the automatic 1-year extension, or after expiration, a conditional permanent resident with a pending Form I-829 (<http://www.uscis.gov/i-829>) may take his or her receipt notice to the nearest USCIS field office and receive documentation showing his or her status for travel, employment, or other purposes.

In such a case, an officer confirms the immigrant’s status and provides the relevant documentation. USCIS continues to extend the conditional permanent resident status until the Form I-829 (<http://www.uscis.gov/i-829>) is adjudicated.

An immigrant investor whose Form I-829 (<http://www.uscis.gov/i-829>) has been denied may seek review of the denial in removal proceedings. ^[14] USCIS issues the immigrant a temporary Form I-551 until an order of removal becomes administratively final. An order of removal is administratively final if the decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals.

Footnotes

1. [^] See 8 CFR 216.6(a)(4)(ii)-(iv), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).

2. [^] See 8 CFR 216.6(a)(4)(iv), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
3. [^] See 8 CFR 216.6(a)(4)(ii), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
4. [^] See 8 CFR 216.6(c)(1)(iii), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16). The sustainment period is the investor's 2 years of conditional permanent resident status. USCIS reviews the investor's evidence to ensure sustainment of the investment for 2 years from the date the investor obtained conditional permanent residence. An investor does not need to maintain his or her investment beyond the sustainment period.
5. [^] See 8 CFR 216.6(a)(4)(iii), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
6. [^] See *Matter of Ho* (<http://www.justice.gov/eoir/vll/intdec/vol22/3362.pdf>), 22 I&N Dec. 206, 212-13 (Assoc. Comm. 1998).
7. [^] USCIS recognizes any reasonable agreement made among immigrant investors with regard to the identification and allocation of qualifying positions. See 8 CFR 204.6(g)(2), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.204_16).
8. [^] See 8 CFR 216.6(a)(4)(iv), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
9. [^] See 8 CFR 204.6(j)(4)(i)(B), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.204_16).
10. [^] For example, force majeure.
11. [^] See INA 216A(b)(1)(A), (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4302.html#0-0-0-3779>).
12. [^] See INA 216A(d)(1), (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4302.html#0-0-0-3825>). See 8 CFR 216.6(a)(4), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
13. [^] See 8 CFR 216.6(a)(1), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).
14. [^] See INA 216A(c)(3)(D), (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4302.html#0-0-0-3821>). See 8 CFR 216.6(d)(2), (https://www.ecfr.gov/cgi-bin/text-idx?&node=se8.1.216_16).

← Chapter 4 (PolicyManual-Volume6-PartG-Chapter4.html)

Chapter 6 → (PolicyManual-Volume6-PartG-Chapter6.html)



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Visa Bulletin (<https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>)

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DHS Office of Inspector General (<https://www.oig.dhs.gov>)

U.S. Customs & Border Protection (<http://www.cbp.gov>)

U.S. Immigration & Customs Enforcement (<http://www.ice.gov>)

White House (<http://www.whitehouse.gov>)

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