

GUIDE TO EB-5 IMMIGRATION
THROUGH INVESTMENT/ EB-5 投资移民指南
By: Gary Chodorow & Geoffrey Handler / 作者: 乔德睿 韩礼德
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I. OVERVIEW
概述

Ten thousand U.S. green cards are available per year for immigrant investors through the employment-based, fifth preference (EB-5) classification.¹ The investor must have invested, or be actively in the process of investing, in an enterprise that will benefit the U.S. economy and create at least ten full-time jobs for qualified employees. 美国每年向移民投资者发放一万份绿卡, 这类绿卡基于就业, 属于第五类 (EB-5)。投资者须已经或者正在积极对有助于美国经济的企业投资, 并至少要为合格雇员提供 10 个全职的工作岗位。

Normally, the EB-5 program requires an investment of \$ 1 million.² However, if the investment is in a targeted employment area (TEA), the minimum investment is \$500,000.³ A TEA is either a rural area⁴ or an area whose unemployment rate is at least 150% of the national average⁵. Investors must establish that their enterprise does business in the targeted area as of the date the petition is filed, and that the area was rural or an area of high unemployment as of that date.⁶ 通常, EB-5 要求投资额达 100 万美元。但是, 如果是向目标就业区 (TEA) 投资, 最少投资额可以是 50 万美元。

¹ Immigration and Nationality Act (INA) § 203(b)(5), 8 USC 1153(b)(5).

² INA §203(b)(5)(C); 8 CFR §206(f). "Invest" means to contribute capital. "Capital" is cash and cash equivalents, equipment, inventory, and other tangible property. 8 CFR §204.6(e).

³ 8 CFR §206(f). The Attorney General may also raise the investment requirement if the investment is in an area where the unemployment rate is below the national average. Id. at §206(f)(3).

⁴ A rural area means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more. 8 C.F.R. § 204.6(e).

⁵ In the case of a high unemployment area, the petition must be accompanied by evidence that either (a) the metropolitan statistical area (MSA) or the county has experienced an average unemployment rate of 150% of the national average; or (b) a government letter certifying that a geographic or political subdivision has been designated as a high unemployment area. 8 C.F.R. § 204.6(j)(6).

⁶ *Matter of Soffici*, 22 I & N Dec. 158 (Assoc. Comm'r, Examinations 1998).

目标就业区 (TEA) 是指农村地区, 或者是失业率至少达到全国平均水平的 150% 以上的地区。投资者必须保证从申请之日起企业就在目标就业区经营, 并且该地区那时必须是农村或高失业率地区。

Normally, the EB-5 program requires that the investment lead to creation of 10 full-time jobs for persons employed directly by the enterprise. However, there are two exceptions. 通常情况下, EB-5 要求投资企业直接创造 10 个全职就业岗位。但是, 有两种例外情况。

First, under the Pilot Program, the ten full-time jobs may be *indirectly* created. The Pilot Program requires investment in a “regional center” approved by the U.S. Citizenship and Immigration Services (USCIS).⁷ A regional center is an entity, organization or agency that has been approved as such by USCIS, which focuses on a specific geographic area within the United States, and promotes economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment.⁸ An investor in a regional center must prove through reasonable methodologies—typically requiring an expert opinion by an economist—that the 10 or more jobs are created indirectly. 首先, 根据投资移民方案, 如果是区域中心移民, 10 个全职就业机会也可以是间接提供。区域中心移民要求经美国公民与移民服务处批准投资于“区域中心”。区域中心是指像经美国公民与移民服务处批准的实体, 组织或机构。它们集中于美国境内的特定地区, 通过增加出口, 提高地区生产力, 提供新的就业岗位, 增加国内投资, 从而推动经济增长。区域中心投资者必须以合理方式证明间接提供了 10 个或以上的工作岗位, 通常是位经济学家的专家意见书。

The second exception to the rule that the investment must create 10 direct full-time jobs is for investment in a “troubled business.” In this case, the investor must simply show that the ten employees are maintained at no less than pre-investment level for a period of at least two years.⁹ A “troubled business” means one that has existed for at least two years, has incurred a net loss for accounting purposes during the twelve or twenty-four month period prior to the filing of the investor’s petition with USCIS, and the loss for such period is at least equal to twenty percent of the

⁷ Kurzban, *Imm. Law Sourcebook* at 738 (citing PL 108-156, 117 Stat. 1944 (Dec. 3, 2003) *reprinted in* 80 No. 47 Interpreter Releases 1675 (Dec.15, 2003)). The Immigrant Investor Pilot Program has been extended until Oct. 1, 2008. Id. 8 CFR § 204.6(j)(4)(B)(iii). In order to be designated a Regional Center by USCIS, an enterprise should already have detailed how it will indirectly create jobs through increased exports. Id. at § 204.6(m)(3).

⁸ 8 CFR § 204.6(m)(3)(i). A petitioner applying through this avenue must show that her investment is within a regional center and the investment will create jobs indirectly through revenues generated by increased exports resulting from the new commercial enterprise. Id. at (m)(7).

“Exports” in this context are services or goods produced directly or indirectly through revenue generated by the new commercial enterprise and transported out of the U.S. Indirect creation of 10 or more jobs must be demonstrated using “economically or statistically valid forecasting devices which indicate the likelihood the enterprise will produce such jobs. Id.

⁹ 8 C.F.R. § 204.6(j)(4)(ii).

troubled business' net worth prior to such loss.¹⁰第二种例外是指向“困难企业”投资创造 10 个直接全职就业岗位。这种情况下，投资者必须证明为 10 位雇员保证提供了至少两年内不低于投资前的水准。“困难企业”指的是一个至少两年以上的企业，在投资者向美国公民与移民服务处申请前的 12 个月或 24 个月之内遭受亏损，并且该期间的亏损最少已经相当于亏损前该困难企业净资产的 20%。

In any case, before the second anniversary of obtaining the green card, the investor must establish that the investment has been substantially maintained.在任何情况下，投资者必须在获得绿卡之后两年内，保证实际投资。

II. REQUIREMENTS

要求

A. Investment

投资

1. The Investment Must Be “At Risk” /投资必须要承担风险

The investment must be “at risk” for the purpose of generating a profit.¹¹ In other words, under the law, there can be no guarantee that investors will make any particular level of profit or even break even. Evidence showing that capital is at risk may include bank statements showing the amount of money deposited in U.S. business accounts, evidence of assets such as real property or equipment to be used for business purposes, evidence of money or property transferred from abroad to be used in the U.S., etc.¹²投资要想获利必须承担风险。也就是说，依法并不保证投资者会达到什么样的盈利水平，甚至保持收支平衡。显示资本承担风险的证据可以包括向美国银行账户存款的银行帐单，像用于商业目的的房地产或设备等资产证据，从国外转移到美国的金钱或财产证据。

Merely putting cash into the corporate account of a business does not show that the capital is “at risk” for the purpose of generating a return.¹³ The full amount of the required capital must be expended by the enterprise directly toward job creation.¹⁴ Otherwise, the capital may not be at risk of loss.仅将现金放进企业账还不能说明资本为了盈利而承担着风险。全部必须的资本必须是该企业直接花在创造就业岗位上。除此之外，资本可能不能说是承担风险。

¹⁰ 8 C.F.R. § 204.6(e).

¹¹ 8 CFR § 204.6(j)(2).

¹² Id.

¹³ C. Gordon, et al., *Imm. Law & Proc.* §39.07 [1][e](Matthew Bender & Co. 2006) (citing Matter of (name not provided) (file no. redacted) (AAO July 7, 2000), discussed in Steven Park and Stephen Yale-Loehr, *More Bad News from the AAO for Immigrant Investors*, 6 Bender's Immigr. Bull. 309 (Mar. 15, 2001).

¹⁴ Id. (citing Matter of [name redacted], WAC-98-194-50913 (AAO Aug. 16, 2002)); Gordon, *Imm. Law & Proc.* at § 39.07[1][e].

2. The Funds Must Have Been Legally Obtained/资金来源合法

The investor must prove the lawful origin of the investment funds. One of the most common problems in EB-5 cases is failure to do so. 投资者必须证明投资的资金来源合法。EB-5 类案件最常见的问题就是不符合这个要求。

There are no restrictions on how the investor may acquire the required funds, so long as the means and source were legal.¹⁵ Evidence to prove the legitimacy of invested capital could include, for example: 只要投资资金来源合法，自己是则取得的并其他限制。证明投资资金合法性的证据可以包括，比如：

- Foreign business licensing and income records; 外资企业营业执照和收入记录册
- Corporate, partnership and/or personal tax returns filed within 5 years; 归档的 5 年之内的公司，合伙企业或/和个人退税文件。
- Evidence of the investor's income over several years previous to the investment (e.g. gifts, loans, investments, ownership in businesses, employment salary); or 投资者在投资之前几年的收入证明（比如，赠与所得，贷款，投资，企业股份，工资）。或者
- Evidence demonstrating other legitimate sources of capital such as the sale of property or business, including contracts or deeds.¹⁶ 能够证明资金合法性的其他证据，如财产或业务转让，包括合同和契约。

B. Employment Creation/就业机会的提供

The investment in a new commercial enterprise must create full-time employment for not fewer than 10 “qualifying employees.”¹⁷ This means employees who are U.S. citizens, green card holders, or other immigrants authorized to work in the United States. (The investor, spouse, sons, daughters, or and nonimmigrants are not considered qualified employees).¹⁸ Independent contractors don't count either. 在新的商事企业投资必须能够至少为 10 位合格雇员提供就业岗位。这些雇员包括美国公民，绿卡持有者，或者其他获准在美国工作的移民。

¹⁵ The policy behind the lawful acquisition requirement for investment funds may have been to discourage the influx of “drug money” and other criminally acquired funds. However, it is unclear whether the evasion of foreign government income taxes, or controls on the transfer of assets out of a country would render investment funds unlawful. Id. at §39.07 [1][e].

¹⁶ For a more complete list see 8 CFR § 204.6(j)(3)(i-iv). Certified copies of all pending civil or criminal actions or proceedings involving money judgments against investor in the last fifteen years may be necessary.

¹⁷ Id. at § 204.6(j). “Full-time employment” is employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. Id. at § 204.6(e). An “employee” is an individual who works for the new commercial enterprise and receives wages or remuneration directly from the new commercial enterprise.

¹⁸ 8 C.F.R. § 204.6(e).

As mentioned above, where the investment is made in a “troubled business,”¹⁹ the investment must maintain the number of existing employees at no less than the pre-investment level for a period of at least two years.²⁰ 如上所述，如果向困难企业投资，则该投资必须最少在两年内能够维持投资前该企业员工的人数。

And when a petitioner invests in a regional center under the Immigrant Investor Pilot Program, the employment creation requirement may be satisfied by either direct hires or indirect hires related to the new commercial enterprise’s business.²¹ A comprehensive business plan is required so that USCIS may draw “reasonable inferences” as to the potential for job-creation.²² The business plan must be credible, and should contain a description of the business, its products and/or services, and objectives.²³ The petition must show through “reasonable methodologies, the likelihood that the business will create ten jobs indirectly.”²⁴ Multiplier tables, feasibility studies, and other valid economic and statistical forecasting devices should be used to show that the enterprise will result in a least ten new direct or indirect jobs.²⁵ 如果申请人根据投资移民方案进行投资，满足创造就业机会的要求既可以是直接雇佣，也可以是与新开办企业经营有的间接雇佣。

C. New Commercial Enterprise/新企业

The investment must be in a “new commercial enterprise.”²⁶ The new commercial enterprise requirement may be met in one of three ways: 投资对象必须是“新企业”。一个新企业必须满足如下三个条件中的一个：

1. The creation of a new business; 开办了一家新企业；
2. The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or 收购现有企业并且同时或稍后重组或改组，产生了创办新企业的效果。
3. The expansion of an existing business through the investment of the required amount of capital, so that a substantial change in the net worth or number of

¹⁹ A “troubled business” is a business that has been in existence for at least two years, has incurred a net loss during the 12 to 24 months before the petition was filed, and whose loss was at least 20% of its net worth before the loss. 8 CFR § 204.6(e).

²⁰ Id. at § 204.6(j)(4)(ii).

²¹ Id. at § 204.6(j)(4)(B)(iii).

²² *Matter of Ho*, 22 I. & N. Dec. 206 (Assoc. Comm’r Examinations 1998).

²³ For an exhaustive list of points to be discussed in the business plan, see Id.

²⁴ Interoffice Memo, Michael Aytes, Acting Assoc. Dir., Domestic Operations, AFM Update: Ch. 22: Employment-based Petitions (AD03-01). Sept. 12, 2006.

²⁵ Id.

²⁶ 8 CFR § 204.6(h). Investor immigrants were previously required to “establish” a new commercial enterprise, however, this requirement has been discarded. Investing in a new commercial enterprise is now sufficient. INA § 203(b)(5)(A)(i).

employees results from the investment of capital.²⁷ 现有企业通过投资达到一定数额而扩张，是净资产或员工数额由于投资而有实质性的改变。

D. Management of the Enterprise/企业的管理

The investor must manage the enterprise, not maintain a purely passive role.²⁸ Management may be either through the exercise of day-to-day managerial control or through policy formation. The investor may meet this requirement by employment as a manager, by serving as a corporate officer, or by acting as a member of the corporate board of directors.²⁹ A limited partner, it is sufficient that the limited partnership agreement provides the investor with those “rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act.”³⁰ 投资者必须管理企业，对企业不能不管不顾。管理可以使通过日常的管理控制，或者是作出决策。为满足这个要求，投资者可以担任经理，或者公司管理人员，或者成为董事会的成员。如果是合伙企业，只要求有限合伙协议规定投资者根据统一合伙企业法所赋予有限合伙人的通常的权利，权力和责任。

III. PROCEDURES/程序

Briefly, there are four steps in the EB-5 process: (A) Make an investment plan. This typically takes several weeks. (B) File the Form I-526, Immigrant Petition by Alien Entrepreneur with USCIS. Preparing, filing, and getting a decision on the I-526 typically takes 3-5 months. (C) The next step is to apply for conditional resident status. Assuming that you are applying at the U.S. Consulate in Guangzhou, this typically takes 9-16 months. At this point, you are a permanent resident and can live in the United States. (D) Finally, **within the 90 day window of the two year** anniversary of becoming a permanent resident, you will need to file the Form I-829, Petition by Entrepreneur to Remove Conditions. 简而言之，EB-5 程序有第四步：(A) 制定投资计划。通常会花上好几个星期。(B) 提交 USCIS 签发的外国企业家移民申请 I-526 表格。I-526 表格的准备，填写，和审批结果通常需要 3-5 个月。(C) 下一步就是申请有条件限制居民身份。假如你你是在美国驻广州领事馆申请的，通常要花花上 9-16 个月。这是您是美国永久居民，可以再美国居住。(D) 最后，在成为永久居民和两年内，您必须填写 I-829 企业家条件移除申请表格。

A. Make an Investment Plan/制定投资计划

²⁷ 8 CFR § 204.6(h). “New” means established after Nov. 29, 1990. Id. at § 204.6(e). In the case of the third option, “substantial change” means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140% of the pre-expansion net worth or number of employees. The investment and job-creation requirements still apply. Id. at § 204.6(h). Investing in an existing enterprise established before Nov. 29, 1990 that falls under option (2) or (3) above may also qualify as a “new” enterprise. See I.J. Kurzban, *Imm. Law Sourcebook*, (AILA 10th Ed. 2006), p. 732.

²⁸ 8 CFR § 204.6(j)(5).

²⁹ If the new enterprise is a partnership, evidence that the petitioner is engaged in either direct management or policy making activities will suffice. Id.

³⁰ 8 C.F.R. § 204.6(j)(5)(iii).

The investment plan should consider factors such as the following:制定投资计划必须考虑一下因素:

- The target for the investment 投资目标
- The role of the entrepreneur in managing the investment 该企业家在管理投资中的作用
- Which specific money to invest (including how to prove that the money was legally obtained)用于投资的具体款项 (包括怎样证明资金来源合法)
- The investment risks involved 投资风险
- The odds of getting the green card 获得绿卡的可能性
- The exit strategy.现有的计划

The investor may wish to visit the U.S. as part of making the investment plan. This way, the investor can meet bankers, real estate professionals, and others who can provide specialized advice related to the investment. Also, the investor can examine any material books and records of the target company, as well as contracts and documents related to this offering.按照投资计划的一部分, 投资者可以访问美国。能够会见银行家, 地产专业人士和其他能够提供与投资有关的专业意见人士。投资者也可以参阅相关的目标公司的文件, 记录, 包括合同和档案。

B. File the Form I-526, Immigrant Petition by Alien Entrepreneur

填写外国企业家移民申请 I-526 表格

The next step is to file a Form I-526, Immigrant Petition by Alien Entrepreneur, with the USCIS Texas Service Center or California Service Center, depending on where the new commercial enterprise is located or will principally be doing business.

Currently, USCIS is taking about 6 months to adjudicate such petitions.下一步就是向 USCIS 得克萨斯服务中心或加利福尼亚服务中心递交外国企业家移民申请 I-526 表格, 在哪递交取决于新企业在何处或者主要营业地。目前, USCIS 通常需要 6 个月时间来对该申请裁决。

At this time, the enterprise must have been established but the investment need not necessarily have been made. It is sufficient if you are actively in the process of investing, as explained below. The petition must show that you obtained the money for the investment legally and that you have a business plan sufficient to create the ten full-time jobs.这个时候, 企业已经设立, 但投资并不必须要做出。如同下面解释的, 只要是在积极地进行投资过程中就足够了。申请必须显示投资的资金来源合法, 所设企业能够至少提供 10 个全职就业岗位。

The petition must be accompanied by the following:提交申请同时还必须:

1. A filing fee of \$ 1435.档案费用 1435 美元。

2. Evidence that you have established a lawful business entity under the laws of the jurisdiction in which it is located, or, if you have made an investment in an existing business, evidence that your investment has caused a substantial (at least 40 percent) increase in the net worth of the business, the number of employees, or both. Such evidence shall consist of copies of articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document; a certificate evidencing authority to do business in a state or municipality, or if such is not required, a statement to that effect; or evidence that the required amount of capital was transferred to an existing business resulting in a substantial increase in the net worth or number of employees, or both. This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records or other similar instruments, agreements or documents evidencing the investment and the resulting substantial change.³¹按照企业所在地法律设立合法的商业实体的证据，或者如果是向现存企业投资的话，投资促成了要么是企业净资产，要么是雇员人数的实质增加（最少 40%），或者两者要同时具备。这些证据包括公司章程，兼并购或组合证书，合伙协议，有限合伙证明，合资协议，商业信托协议，或其他类似组织文件的复印件；证明有关机关批准在某州或城市营业的证书，如果没有证书，有类似的申明；促成了要么是企业净资产，要么是雇员人数的实质增加（最少 40%），或者两者要同时具备的法定投资资金向企业的转移证明；证明的形式必须是股权购买协议，投资协议，注册财务报告，工资纪录，或者其他的一些证明投资或引起是指改变的票据，协议，或文件。
3. Evidence, if applicable, that your enterprise has been established in a targeted employment area. A targeted employment area is defined as a rural area or an area which has experienced high unemployment of at least 150 percent of the national average rate. A rural area is an area not within a metropolitan statistical area or not within the outer boundary of any city or town having a population of 20,000 or more.如果可行，在目标就业地区设立企业的证明。目标就业地区是指农村或失业率至少超过全国平均水平 150%的地区。农村地区要排除特大城市统计地区，或任何在城市或城镇外围人口超过 2 万的地区。
4. Evidence that you have invested or are actively in the process of investing the amount required for the area in which the business is located. Such evidence may include, but need not be limited to, copies of bank statements, evidence of assets that have been purchased for use in the enterprise, evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security

³¹ For a more complete list of possible evidence, see 8 CFR § 204.6(j)(1)(i-iii).

agreement, or other evidence of borrowing that is secured by assets of the petitioner.³² “Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice.”³³ 已经投资或正处于向企业所在地积极投资要求的资金过程之中。这些证据包括但不限于：银行报表的复印件，以企业使用为目的购买的财产，资金转移或者承诺转移给新企业，从而获得股权，贷款或抵押，期票，担保协议，或者或者其他借入证明使申请人获得财产。仅有投资意向，或者投未来资计划没有现实承诺是不够的。

5. Evidence that capital is obtained through lawful means. The following evidence should be provided if applicable: 资金来源合法证明。下列证据如果有应该提供：
 - a. Foreign business registration records; 外资登记记录；
 - b. Business and personal tax returns (including income, franchise, property, or other tax returns) filed within five years with any government. 任何政府归档的近 5 年内企业和个人退税证明（包括所得，特许经营，财产和其它退税）
 - c. Evidence identifying other sources of capital (for example, evidence of sale of a house, inheritance or gift); and/or 显示其他资本来源证明（例如，房屋出售，继承或受赠证明）；和/或者
 - d. Certified copies of any judgment, pending governmental civil or criminal actions, or private civil actions against the investor from any court in or outside the United States within the past 15 years. 有效的判决复印件，过去 15 年美国境内外针对投资者的未决公共民事或刑事诉讼，或私人诉讼

Typically, the investor should also submit five years of bank records, proof of ownership in any relevant business for five years, and financial statements for any relevant business. 常，投资者还要提交过去五年的银行纪录，任何相关企业的所有权证明和财务报表。

6. Evidence that the enterprise will create at least ten positions for qualified employees. Such evidence may consist of copies of relevant tax records, Forms I-9, or other similar documents, if the employees have already been hired, or a business plan showing when such employees will be hired within the next two years.³⁴ (See above for descriptions of how troubled businesses and regional centers can meet the employment creation requirement). 企业将

³² In a typical case, the investor may transfer the capital into a binding escrow account at a bank with instructions to release the funds upon approval of the I-526. The investor’s agreement with the enterprise and escrow instructions may provide, for example, that the funds are “committed to the enterprise and made available for the purpose of job creation immediately and irrevocably upon approval of the I-526.” In some cases, the plan may call for release of portions of the funds at subsequent times.

³³ 8 C.F.R. § 204.6(j)(2).

³⁴ 8 CFR § 204.6(j)(4).

会提供至少 10 个全职工作岗位的证明。如果已经雇用了员工，或者企业计划在未来两年将要招聘员工，这些证据要包括相关税务纪录，I-9 表格，或类似文件复印件。（参见上述困难企业和区域中心要求的说明）

7. Evidence that you are or will be engaged in the management of the enterprise, either through the exercise of day-to-day managerial control or through policy formation. Such evidence may include a statement of your position title and a complete description of your duties, evidence that you are a corporate officer or hold a seat on the board of directors, or, if the new enterprise is a partnership, evidence that you are engaged in either direct management or policy-making activities.³⁵ 参与或将会参与企业管理的证明，不论日日常管理控制还是决策。这些证据可以包括职位文件，具体职责描述，公司管理人员或董事会成员证明，如果新企业是合伙制的，则要证明参与直接管理或者参与决策。

C. Apply for Conditional Resident Status/申请有条件居民身份

Once the immigrant investor petition is approved, the investor may file an application to obtain conditional resident status for the investor, spouse, and any children under age twenty-one.一旦投资者移民申请获得批准，投资者就可以为自己，配偶和未满 21 周岁的子女申请有条件居民身份。

There are two routes to apply for conditional resident status. If the investor is in the United States, then in the alternative a Form I-485, Application to Adjust Status, may be filed with USCIS. If the investor is not in the United States, an application for an immigrant visa should be filed with the proper U.S. Consulate. For residents of Mainland China, that is the U.S. Consulate in Guangzhou. Currently, this process is taking approximately nine to sixteen months after approval of the Form I-526.申请有条件居民身份有两条途径。如果投资者在美国，可以向 USCIS 提交 I-485 表格申请改变身份。如果不在美国，则应向相应的美国领事馆申请移民签证。大陆居民应向美国驻广州领事馆提交。目前，这个过程在 I-526 获准后大约要花上 9 到 16 个月的时间。

Using either route, the government's main concern in reviewing the application will be to ensure that the applicants do not fall within the "grounds of inadmissibility." These grounds are categories of persons who are ineligible to immigrate absent exceptions or special waivers. These grounds include but are not limited to persons with certain criminal records, persons with certain prior U.S. immigration violations, persons previously removed from the United States, persons who have previously made misrepresentations or committed fraud in visa or immigration applications, and certain members of the Communist Party or associated organizations. For more information about these grounds, please refer to our website

³⁵ For an investor who will be engaged only in policy formulation, a typical case will include a preliminary activity schedule showing policy decisions to be made during by the investor.

at <http://www.fwhonglaw.com/eng/areas/imm/basics/Admissibility.htm>. If you are concerned you may be inadmissible on any of these grounds, please let our firm know as soon as possible. 不管是那种途径, 在审核中政府主要考虑的是确保申请人不属于有禁止入境原因。属于这些原因的人无论如何都不符合移民条件, 也没有特殊免签。这些原因包括但不限于有一定犯罪记录, 以前违反过美国移民法, 以前脱离过美国籍, 以前在签证或移民申请中有虚假陈述或欺骗行为, 共产党及相关组织的一些成员。对此想了解更多, 请访问我们的网站 <http://www.fwhonglaw.com/eng/areas/imm/basics/Admissibility.htm>。如果你担心会因这些原因拒签, 请尽快通知我们。

The basic documents submitted by each person during the immigrant visa application process include various forms, a valid passport, birth certificate, marriage and divorce decrees, and a medical examination report from a doctor designated by the Consulate. 在签证申请过程中递交的基本材料包括: 各种表格, 有效护照, 出生证明, 结婚离婚证明, 和领馆指定医生的体检表。

When the immigrant visa is approved, the family can then enter the United States as conditional residents. There is no requirement that the family live near their enterprise, except of course the investor must do so if the I-526 shows that the investor will participate in the day-to-day management of the enterprise. 如果移民签证获批, 家庭成员就可以有条件居民身份入境美国。并不要求家庭居住在企业附近, 除非根据 I-526, 投资者必须对企业进行日常的管理。

D. File the Form I-829, Petition by Entrepreneur to Remove Conditions

递交 I-829, 企业家申请解除条件表格

In order to become a lawful permanent resident, eligible investors must file USCIS Form I-829, Petition by Entrepreneur to Remove Conditions.³⁶ Form I-829 must be filed within 90 days before the second anniversary of an Alien Investor's admission to the United States as a conditional resident. The petition must be accompanied by all required documentation and signed by the petitioner. The petitioner's spouse and children should be included in the petition.³⁷ The petitioner need not be in the U.S. at the time of filing, but must return to the U.S. with her spouse and children if necessary to comply with interview requirements.³⁸ The condition is removed if, at the end of the period, the investor remains in full compliance with the law. 为成为合法永久居民, 合格投资者还必须向 USCIS 递交 I-829 企业家申请解除条件表格。I-829 表格必须在外国投资者获得有条件居民身份第二周年的 90 天以内递交。申请还必须同时递交必须的材料, 并经申请者签名。申请者的配偶和子女也应包括在申请中。在递交材料的时候, 并不要求投资

³⁶ 8 CFR § 216.6(a)(1).

³⁷ Id. Children who have reached the age of 21 or married during the period of conditional permanent residency status, or a petitioner's former spouse, who was divorced during the period of conditional residency, may be included in the petition or file separately. Id.

³⁸ Id. at § 216.6(a)(3).

者必须在美国境内，但是如果有面试要求，则必须与其配偶与子女返回美国。如果期满投资者完全符合法律规定，条件将会被移除。

1. Documentation Required with the Petition for Removal of Conditions **申请条件解除所需材料**

The following documentation must be filed in support of the petition:为使申请成功必须提供以下材料:

1. Evidence that a commercial enterprise was established by the alien, e.g. Federal income tax returns;³⁹企业是该外国人设立了证据，比如，联邦所得税退税
2. Evidence that the alien invested or was actively in the process of investing the requisite capital, e.g. wire transfer records or an audited financial statement; 该外国人已经或正在积极地投资所要求的资本的的证据，比如电汇记录或财务审计报告
3. Evidence that the alien sustained the requirements in (1) and (2) above throughout the alien's period of residence in the U.S.; and 证明该外国人在美国居住期间一直满足上述两个条件的证据
4. Evidence that the alien created or can be expected to create ten full-time jobs for qualifying employees within a reasonable amount of time, e.g. payroll records.⁴⁰证明该外国人已经或预计可以为 10 个合格雇员创造岗位
5. The filing fee for an I-829 petition to remove conditions is currently \$2,930 (including biometrics), plus an addition \$80 (to cover biometrics fees) for each dependent included in the petition. I-829 档案申请条件解除所需费用目前是 2,930 美元（包括生物识别费用），另外每个被抚养人多交 80 美元（包括生物识别费用）。

2. Failure to File Petition for Removal of Conditions/未能提交条件移除申请

The failure to file a Form I-829 within the 90 days preceding the second anniversary of the date on which the alien received conditional lawful permanent resident status will result in automatic termination of that status and the initiation of deportation proceedings. 外国人在从得到有条件合法永久居民身份后两周年的前 90 天内，如果未能递交 I-829 表格，该种身份自动中止，同时开始被驱逐出境。

³⁹ The INA no longer requires an investor immigrant to have “established” the enterprise, but the CFR still retains this language. INA § 203(b)(5)(A)(i); 8 CFR § 216.6(a)(4)(i).

⁴⁰ Id. at § 216.6(a)(4).