

US EB-5 Immigrant Investor Program – Lawful Source of Investment Funds

R. Oliver Branch JD
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The US EB-5 Immigrant Investor Program was created by Congress in 1990 for the purpose of stimulating the US economy through job creation and capital investment by foreign investors.

Individuals who make a qualifying investment and otherwise meet all eligibility criteria for the EB-5 program are granted Conditional Lawful Permanent Resident (LPR) status for a two-year period. After meeting the requirements to remove conditions, the EB-5 investor may file to remove the conditions and gain full LPR status.

Pursuant to the EB-5 and related regulations, the qualifying investment (see our [FAQs on EB-5](#)) made by the EB-5 investor must prove that the investment funds were “obtained through lawful means” as defined by 8 C.F.R. § 204.6(j). While this requirement is mostly ensuring that the investment funds did not originate through criminal activities, in practice, it places a high bar for which the investor must provide substantial evidentiary documentation to overcome.

Generally, investment funds may be sourced from any of the following sources:

- Employment earnings and bonuses;
- Sales of business assets;
- Earnings from the investor's business;
- Gifts or inheritance;
- Stocks;
- Retirement funds;
- Proceeds of real estate transactions; and
- Certain qualifying loans.

Furthermore, the EB-5 regulations (see 8 C.F.R. § 204.6(j)(3)(i)-(iv)) provide four categories of documentation to prove lawful source of funds, including:

- Foreign business registration records;
- Corporate, partnership, and personal tax returns or similar documents (filed within the past five years);
- Evidence identifying other sources of capital; or
- Certified copies of court judgments, pending court cases, and administrative proceedings (within the past 15 years).

While the standard of proof the investor must meet regarding the lawful source of funds is “preponderance of the evidence,” the practical application of this standard of proof in the EB-5 context requires extensive documentation, analysis, proper legal argument, and demonstration of the lawful source of funds.

To learn more about the US EB-5 Immigrant Investor Program, please join us for our upcoming [webinar](#) on August 27, 2020 – “[The E-2 and EB-5 Investor Programs: US Immigration Options for Investors.](#)”