Major changes coming to EB-5 investor program

U.S. Citizenship and Immigration Services (USCIS) published a final rule on July 24, 2019 that makes several significant changes to the EB-5 Immigrant Investor Program. These changes will go into effect on November 21, 2019.

The key changes to the EB-5 program include the following:

(1) Raising the minimum investment amounts;
(2) Revising the standards for certain targeted employment area (TEA) designations and giving USCIS responsibility for directly managing those designations;
(3) Clarifying procedures for the removal of conditions on permanent residence; and
(4) Allowing EB-5 petitioners to retain their priority dates under certain circumstances.

Under the EB-5 program, if a foreign national invests enough lawfully acquired money into a new commercial enterprise and creates (or, in some cases, saves) enough jobs for U.S. workers, the U.S. government will grant the investor and certain family members conditional permanent resident status (i.e., green cards) in the United States. Until now, the standard minimum investment required under the program was $1 million. If, however, the foreign national chose to invest in a new commercial enterprise in a "Targeted Employment Area" (TEA), which is an area considered to have a higher need for job creation, the required investment dropped to $500,000.

Once the new rule goes into effect, the standard minimum investment amount will increase from $1 million to $1.8 million. The minimum investment amount in a TEA will also increase proportionately, from $500,000 to $800,000. In addition, the rule states that the minimum investment amounts will automatically adjust for inflation every five years.

In addition, the final rule makes changes to the EB-5 program that are meant to stop gerrymandering of high unemployment areas. Gerrymandering (deliberately manipulating the boundaries of such areas) was sometimes done by combining census tracts to connect a prosperous project location to a distressed community to obtain the qualifying unemployment rate, and thus, the designation of an area as a TEA. Under the final rule, USCIS will take back the determination of TEAs from the states, and will make those determinations based on revised criteria.

The final rule also provides that certain family members of primary EB-5 applicants must independently file applications to remove the conditions on their permanent residence (EB-5 applicants, if approved, are initially granted conditional permanent residence, and must apply to remove those conditions after two years).

Finally, the new rule allows investors who have previously approved EB-5 petitions to retain their priority dates when they need to file a new EB-5 petition under certain circumstances.

The final rule has created concern in the immigrant investor community. Many people believe that the final rule will make it harder for individuals to obtain green cards through investment in the United States. However, there are other immigration options for foreign nationals who are entrepreneurs or investors. These include E-1 and E-2 treaty trader and investor visas and L-1 intracompany transferee visas. If you would like to discuss any of these options, please feel free to contact the Shpigler Law Firm by telephone at 770-592-0009 or by email at debbie@shpigler.net.