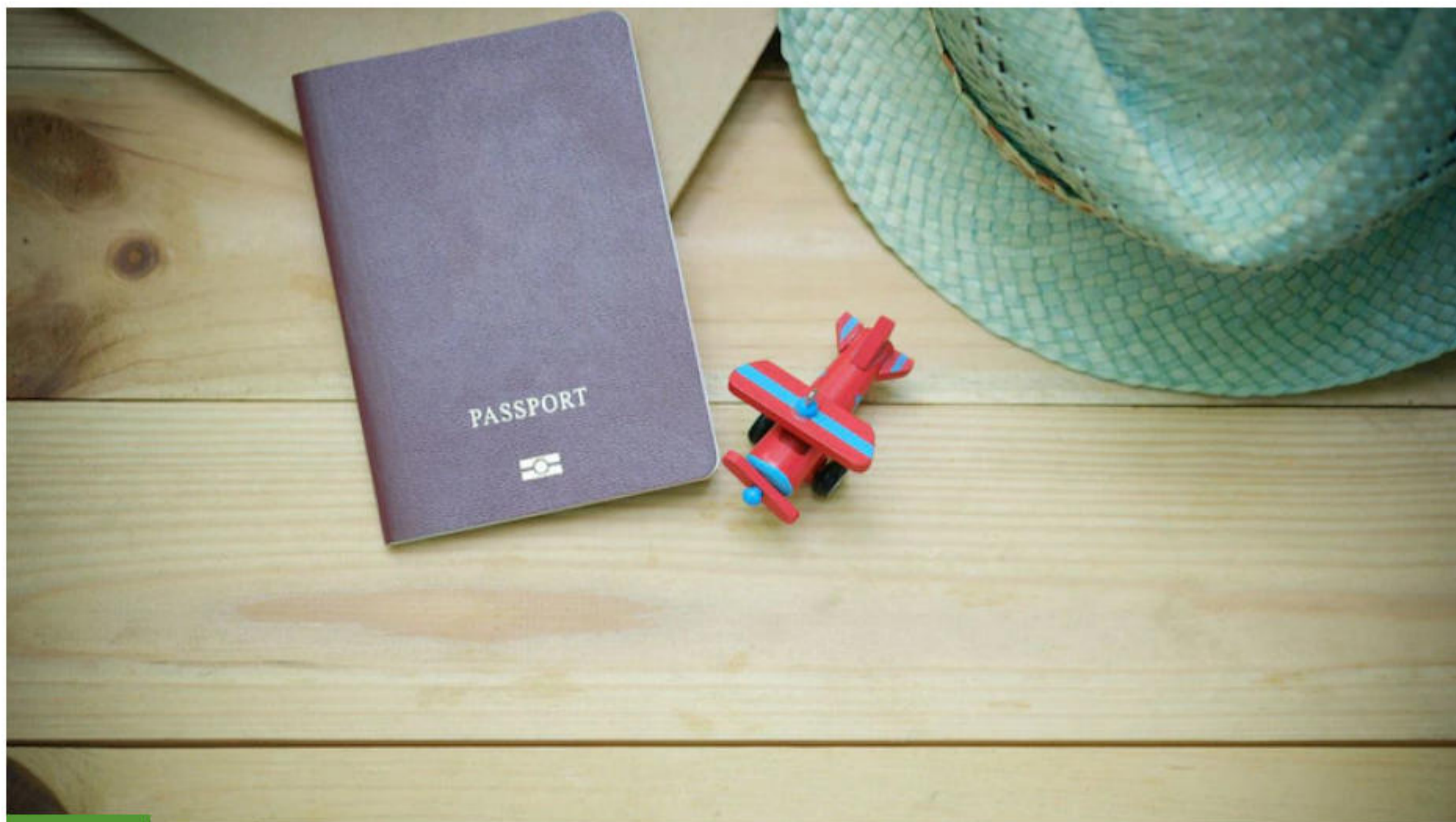


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Immigration series | EB-5 visa: What now? The dilemma of investors

The last few weeks have seen lots of action on the EB-5 front, which seems to have shaken the industry and potential EB-5 investors out of their lethargy.

PARESH KARIA | AUGUST 07, 2021 / 04:13 PM IST



Representational image. The EB-5 visa is one way for eligible candidates to get permanent residence in the US by making an investment. Of late, there have been a few changes in the more popular Regional Centre Program for EB-5.

The California district court's ruling on June 22, setting aside the changes in the EB-5 program made in November 2019, saw the program returning to its earlier avatar, which among other things, reduced the investment amount back to \$500,000.

The industry was pleased, and many investors rushed to file their EB-5 petitions for \$500,000. However, the joy was short-lived as the Regional Centre Program could not be authorised before its sunset on June 30, 2021.

Nevertheless, many investors managed to file their applications before the sunset and turned out to be lucky as the USCIS on July 7, 2021, reaffirmed that it is reverting to the old rules (before November 21, 2019).

With the investment amount back to \$500,000 but the Regional Centre program yet to be reauthorised, what are the options before the investors?

Option 1: Invest in direct EB-5 program

While the Regional Centre Program was a pilot program that required reauthorisation at regular intervals (and has been happening over the last several years), the direct EB-5 program is a permanent program, and still available to the investors who wish to lock-in with investment of \$500,000.

Hitherto, this route has not been popular with investors due to the business/financial risks and difficulties and uncertainties associated with job creation. Under this option, you not only have to invest in a New Commercial Enterprise, but also create and maintain a minimum of ten jobs for Americans. You need to manage their payroll, benefits, etc., and file reports with immigration authorities. Further, this route may not be suitable for applicants on F1 or H1 B visas as they may not be able to run the business themselves.

Investing in someone else's business is possible, but it may be risky as you do not have much control even though you take the equity risk. Also, the options available are limited.

Having said that, as of now, this is the only option available for \$500,000.

Option 2: Wait for reauthorisation of the Regional Centre Program

While the Regional Centre Program currently stands suspended, there is every possibility that it may resume soon. However, one has to wait and see when this happens and whether the EB-5 investment amount remains \$500,000 till such time.

The Regional Centre Program has been the most preferred way of migrating to the US for EB-5 investors, as this route offers several advantages, which include:

1. Lower immigration risk as the Regional Centre (RC) projects are not required to provide any evidence of actual employment. Unlike direct EB-5 projects, they get the benefit of indirect job creation under which they simply have to show spendings on the project and apply an economic model to it to establish job creation.
2. RC project can be structured to provide loan investments that are to be repaid and, hence less risky than direct EB-5 projects where you can only make equity investments.
3. RC investment is a passive investment, and hence those on F1 and H1 B visas and others who simply want to invest and get a Green Card can easily participate.

As can be seen from above, there are advantages and disadvantages associated with both the above options.

With the direct route, there is a certainty that you can file your EB-5 petition even today at \$500,000. However, it carries financial risks (equity investment) and immigration risks (direct jobs creation).

In the case of RC projects, the above risks are mitigated, but there is uncertainty as to when the program will reopen and whether it will still be available at \$500,000.

What can one do?

The EB-5 aspirants are in a dilemma. Given the situation, here is what one can do :

- 1. Arrange for funds:** Whether you go for direct EB-5 project or RC project, you will still need funds to invest. Hence one should look at their financial circumstances and prepare an action plan to arrange for the requisite funds, which may be required at short notice.
- 2. Prepare your source of funds (SoF) documentation:** Along with identifying the funds, you also need to start collecting the relevant documents supporting your SoF. Based on our experience, we can say that this is one of the most critical exercises and needs to be done meticulously, which requires time.
- 3. Start identifying projects for investment:** While the SoF exercise is going on, you can parallelly look at projects for investment. Regional Centres are gearing up for the reauthorisation, and many of them are showcasing projects for \$500,000. It may be worthwhile to look at them in case the opportunity arises when you are done arranging funds and SoF.

There are a few direct EB-5 projects also available in which you may invest right now or wait for other such projects to come your way.

More articles and interviews in our Immigration series: **6 countries that offer talent visas; 9 countries that offer citizenship-by-investment; 62% increase in enquiries for investment migration programs from Indians in 2020: Nirbhay Handa of Henley & Partners**

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