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H-1Bs & EB5; The Interplay for Indian Applicants

The H-1B nonimmigrant professional work visa is very popular and there are literally hundreds of thousands of H-1B visa holders in the US, many of who are Indian citizens. Indian H-1B visa holders in the US are often sponsored for a green cards by their US employers. The rub is that due to per country quotas the backlogs, by some estimations, exceed 20 years which makes that path a wholly untenable green card strategy. Meaningful job changes are not permitted and it is virtually impossible to plant deep roots for the applicant and her family during period of uncertainty. Enter EB5!

Briefly, EB5 is an investment based, self sponsoring green card application process. Currently, in most cases, the equity investment amount is \$500,000 which is set to go to \$900,000 on November 21, 2019. The investment must be responsible for the creation of 10 full time jobs. There are 10,000 EB5 green cards available each fiscal year (October 1-September 30).

For the first time, India/EB5 reached its per country annual quota which is a mere 700. Not a significant number for a country with a population of 1.3 billion people with a strong economy that created a significant wealthy class over the last 20 years. The cap was hit in July, 2019 which created a backlog, the length of which is not precisely know but best guesses are from 4-8 or so years. Although this can be a deterrent for many, it is still the fastest way for most Indians to get a green card, short of becoming the spouse of a US citizen.

A significant benefit of being an Indian EB5 applicant, currently in the US in H-1B (and some other) nonimmigrant status is the probability of actually getting an open market work permit and Advance Parole (international travel privileges) BEFORE their turn is actually reached on the green card waiting list. This is explained by a review and analysis of the 2 charts contained in the US State Department's monthly "Visa Bulletin". This will be topic of next writing.

Mitch Wexler is a Partner with Fragomen which is the largest provider of professional immigration services in the world. He manages the firm's 3 Southern California offices, each with robust EB5 teams. He can be contacted at mwexler@fragomen.com

DISCLAIMER

This is not intended to be legal advice but rather general information. Laws and processes change regularly and the above is valid as of the date of this writing, August 19, 2019.