



## **GCI Business Immigration Quarterly Newsletter August 2014**

The third 2014 quarterly GCI Newsletter includes:

- ⇒ 3.25 Billion EB-5 Foreign Capitals for Economic Development Projects
- ⇒ Taxation and Social Security Benefits for Foreign Nationals
- ⇒ H-2A Agricultural Workers Program

**Gulf Coast Immigration** was founded to meet the growing need for comprehensive services in all aspects of immigration, including nationality law, and domestic and international legal resources for both American and foreign companies and individuals in the southern Gulf Coast region. It handles both employment- and family-based immigrant and non-immigrant visa petitions and applications with a subspecialty focusing on the U.S. Immigrant Investor Program (EB-5 Program). It also provides resources on global migration for 34 countries to assist international companies in managing the immigration process for their employees worldwide.

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### **3.25 Billion EB-5 Foreign Capitals for Economic Development Projects**

Last year more than 3.25 billion in economic development projects was funded through the EB-5 Program. As Canada's foreign investment programs have been closed earlier this year, the U.S. EB-5 program remains a core program to attract foreign investors to the United States.

The federal EB-5 immigrant visa program is designed to provide legal permanent residents (green cards) and a path to citizenship for foreign nationals who invest at least \$1,000,000 in a qualified U.S. business and create 10 new full-time jobs as a direct result of the investment. The minimum investment is lowered from \$1 million to \$500,000 if the foreign investment is made in a business that is located in a rural or high-unemployment target area.

There are two ways a foreign investor can make an EB-5 investment depending on how actively an investor wants to participate: Direct Investment and Regional Center Investment. Direct investment is usually for those who want to be involved in day-to-day management or running an active business. A Regional Center investment involves minimal management requirements. Foreign investors in a Regional Center project are not required to live in the place of investment; rather, they can live wherever they wish in the U.S. Most importantly, because a Regional Center investment counts both indirect and direct jobs, it allows the investor to qualify by proving a combination of 10 direct and/or indirect employees. A Direct Investment only counts jobs that were created directly as a result of the investment. Because of these advantages of Regional Center investments, over 90% of EB-5 investments are made through Regional Centers to rural or high-unemployment target area-based projects.

To participate in the EB-5 program, foreign investors first file a petition with USCIS to obtain EB-5 green cards for the principal investor and his/her qualifying immediate family members (spouse and minor children). USCIS reviews each EB-5 petition to determine whether the investment was made into an approved/qualified U.S. business, whether the \$1million/500,000 is at risk and being invested or in the process of being invested at the time of application; whether funds have been obtained through legal means; whether 10 new jobs will be created as a direct result of that investment or spur either a 40% increase in net worth or employees the investment was made in a business which has been purchased and restructured.

Congress allocates 10,000 EB-5 visas annually; however, the program has been underutilized and has never reached this cap. According to the USCIS, in FY 2013, 6,346 foreign investors filed petitions, which accounts for more than \$3.25 billion in capital formation, and 3,699 EB-5 visas were issued, which accounts for about \$1.83 billion.

As the EB-5 program requires would-be foreign immigrants to invest at least \$1,000,000 in a qualified U.S. business and create 10 new full-time jobs as a direct result of the investment, the numbers of issued visas mean not only capital investment but also job creation in the U.S. For FY 2014 (October 2013 through June 2014), USCIS has received 7,688 applications and issued 4,015 EB-5 visas.

According to a study, in 2012, over 42,000 jobs were created, added over \$3.39 billion in GDP and generated more than \$712 million in federal/state/local tax revenue through the EB-5 program.

If you have questions about the EB-5 Program, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or [skim@gcimmigration.com](mailto:skim@gcimmigration.com)

## **Taxation and Social Security Benefits for Foreign Nationals**

### **Tax Residence vs. Tax Non-Resident**

The United States taxes the worldwide income of its citizens and resident foreign nationals (resident aliens) regardless of whether the individual lives and works in the United States or abroad. This rule also applies to US citizens who hold dual citizenship.

Under the US Internal Revenue Code, foreign nationals are *tax residents* if 1) they are Lawful Permanent Residents (LPRs, called Green Card holders); *or* 2) pass the “substantial presence test,” which is defined as being physically present in the United States for 31 or more countable days with respect to any calendar year. For purposes of this article, foreign nationals who fall into either of these categories are referred to as tax resident. Tax residents do receive credit for certain taxes paid abroad; however, failure to pay US taxes may result in a finding, in the case of LPRs, that they have abandoned their green card status.

The income of tax resident is generally subject to both federal and state taxes in the same manner as US citizens. Tax residents must report all interest, dividends, wages, and other

compensation for services, income from rental property or royalties, and other types of income on his/her US tax return, whether earned within or outside the United States. Additionally, the estates of tax residents are subject to US estate tax.

Tax nonresidents are foreign nationals who do not hold a green card or who have not passed the substantial presence test according to the IRS Code. Tax nonresidents are subject to US income tax only on US source income and income effectively connected with the conduct of a US trade or business. Under the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), however, foreign individuals are subject to tax laws if they have abandoned their LPR status after June 17, 2008, and meet one of the following conditions: a) an average annual income of \$145,000 for the five years prior to expatriation from the United States; (b) a net worth of \$2 million or more; or (c) failure to comply with expatriation filing requirements for the five years prior to leaving the United States.

### **Social Security**

Foreign nationals of a country with a totalization treaty with the United States may claim an exemption from US Social Security taxes and claim a refund of Social Security taxes if they are working in the United States for their foreign employer abroad. Most European countries have a totalization treaty with the US, including Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom. In addition, foreign nationals of a country with a totalization treaty with the US may be able to claim coverage under their home country's Social Security system even after becoming US permanent residents.

Noncitizen foreign workers with Social Security-covered employment must pay Social Security payroll taxes regardless of whether or not they are authorized to work in the US.

To be eligible for Social Security retirement benefits, noncitizen foreign workers must have 10 years of Social Security-covered employment with some exceptions. H-2A agricultural workers, and F and M students are not covered by Social Security.

The Social Security Act requires noncitizen foreign workers in the US to have lawful status in order to receive benefits. If they do not meet the lawful presence requirement, their benefits are suspended. However, they may receive benefits outside the US if they satisfy an "*alien nonpayment provision*" of the Social Security Act.

The Provision refers to aliens who are outside the US and defines alien as a person who is a citizen of a foreign country.

Aliens who reside outside the US for six consecutive calendar months cannot receive benefits starting with the seventh month of their absence and payments will be suspended. In addition, the benefits may not be resumed until aliens return to the US for one calendar month. See [RS 02610.041](#), [RS 00204.010](#), and [RS 02650.001](#)

Foreign nationals who fall into certain visa categories granted by the US Citizenship and Immigration Service, Department of Homeland Security, may be eligible for SSI if they:

- Lawfully resided in the United States on Aug. 22, 1996, and are blind or disabled; or

- Received SSI on Aug. 22, 1996, and are lawfully residing in the United States; or
- Lawfully admitted for permanent residence (Green Card) and have a total of 40 credits of work in the United States.

Foreign nationals may be eligible for SSI if they are:

- Active duty members of the U.S. armed forces;
- Noncitizen members of federally recognized Indian tribes;
- Certain noncitizens admitted as Amerasian immigrants;
- Cuban/Haitian entrants admitted under the Refugee Education Assistance Act;
- Certain victims of severe forms of human trafficking; and
- Certain Iraqi or Afghan special immigrants who are admitted as lawful permanent residents.

For further information visit your local Social Security office, or the website at [www.ssa.gov](http://www.ssa.gov).

Foreign nationals who are US tax residents may wish to consider consulting a professional with regard to issues related to taxation and social security benefits. Please contact my office for a referral if you do not know of an appropriate professional.

### **H-2A Agricultural Workers Program**

In 1986, the H-2A Program was created under the Immigration and Nationality Act (INA) to help agricultural employers obtain an adequate labor supply while also protecting the jobs, wages, and working conditions of U.S. farm workers. The program allows a U.S. employer anticipating a shortage of domestic agricultural workers to hire foreign full-time workers on a temporary basis to perform agricultural work. The employer must first receive a temporary labor certification from the Department of Labor (Labor) before the U.S. Citizenship and Immigration Services (USCIS) can approve a visa petition for H-2A workers.

Labor's OFLC within the Employment and Training Administration handles H-2A applications for a temporary labor certification, and ensures a condition of certification that qualified U.S. workers are not available for the job and the employment of temporary foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. Labor's Wage and Hour Division enforces the terms and conditions of the agricultural work contract and worker protections under the H-2A Program.

The process of obtaining a temporary labor certification from the OFLC under the H-2A Program involves the following basic steps:

- Step 1: Filing a Job Order with the State Workforce Agency (SWA)
- Step 2: Filing an H-2A Application with the Chicago National Processing Center (NPC)
- Step 3: Conducting Recruitment for U.S. Workers

Step 4: Completing the Temporary Labor Certification Process

Step 5: Submitting Form I-129 to USCIS

Step 6: Prospective workers outside the United States apply for visa and/or admission

If you have questions about the H-2A Program, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or [skim@gcimmigration.com](mailto:skim@gcimmigration.com)

### **About Gulf Coast Immigration**

Immigration and Global Migration are one of the most complex and dynamic areas of law and policy affecting America's social and economic composition. A well-functioning immigration system is critical to America remaining strong and vibrant. To contribute to this goal and to meet the growing needs for comprehensive and sophisticated legal services in all aspects of business immigration-related matters in Northwest Florida, South Alabama and Mississippi, GCI has been issuing monthly business immigration newsletters/updates and immigration alerts to announce fast-breaking developments.

GCI offers guidance, advice, counsel and representation to business and individual clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. GCI also conducts fee-based educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments on the U.S. immigration law and policy, including I-9 Compliance, E-Verify, and the EB-5 Program. For further information about GCI, publications and lectures and seminars, contact us at [www.gcimmigration.com](http://www.gcimmigration.com)

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