

**Immigration law - EB-5 Investment Projects. – Utilization of Tenants in Commercial Buildings  
Toward Expected Job Creation Goals**

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**Intro:**

Mr. Andrew Cuevas, Esq., is the President of Cuevas & Goldstein, P.A., and Vantage Property Title Company. Mr. Cuevas has been practicing law since 1993 in the area of Business Immigration Law and Commercial transactions, including commercial and residential real estate transactions and business acquisitions for foreign investors. If you have any questions regarding this article or any other questions, you can contact Mr. Cuevas at (305) 461-9500 or at [acuevas@cuevaslaw.com](mailto:acuevas@cuevaslaw.com). If you are interested in reading previous newsletters, please visit [www.cuevaslaw.com](http://www.cuevaslaw.com), select the icon for **Newsletters**, and then choose the area of law you are interested in.

The EB-5 Investment Immigrant Visa, which results in obtaining the United States permanent residency, has become hugely popular for those foreign investors who wish to invest in existing commercial enterprises in order to obtain the United States Permanent Residency. In December of 2012, the United States Citizenship and Immigration Service (USCIS) issued a Guidance Memorandum addressing the issue of whether tenants in a commercial building can be considered for purposes of job creation.

The USCIS, in processing EB-5 applications (either from the developer side or the investor side) analyzes whether projected jobs attributable to prospective tenants (which would occupy the commercial space created by the EB-5 capital) would represent newly created jobs, and not jobs that the tenant had merely relocated from another location. This determination is necessary to assess whether there is a reasonable causal link between the EB-5 enterprise and the job creation that would allow for the attribution of the tenant jobs to the EB-5 enterprise.

In regional center cases that rely on tenant occupancy models, as in any other regional center cases, USCIS requires evidence that the claimed jobs result, directly or indirectly, from the economic activity of the EB-5 commercial enterprise. Jobs that are merely re-located rather than created do not count. With respect to indirect job creation, the task for the applicants and petitioners is to project the number of newly created jobs that would not have been created but for the economic activity of the EB-5 commercial enterprise.

To claim credit for tenant jobs, applicants and petitioners may present evidence backed by reasonable methods that map a specific amount of direct, imputed, or subsidized investment to such new jobs. Another option is to utilize the facilitation-based approach, where the acceptance of created jobs will

depend on the extent to which applicants or petitioners can demonstrate that the economic benefits provided by a specific space project will remove a significant market-based constraint. One way applicants and petitioners can make this showing is to indicate how a specific space project will correct market imperfections and generate net new labor demand and income that will result in a specified prospective number of tenant jobs that will locate in that space.

As part of any EB-5 regional center project, the importance of the economic impact report cannot be understated, as a well prepared economic impact report will increase the likelihood of approval of a regional center project. Such report will consider the factors addressed above, as well as many other requirements for a successful EB-5 project.

This article is being presented solely as a brief explanation of some of the factors considered in processing EB-5 investment visa applications, but is not to be intended as a full explanation of all considerations. This document is not to be utilized as legal advice in processing applications.